

H3N3WAL1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

S1 16 Cr. 0338 (PKC)

5 WILLIAM T. WALTERS,

6 Defendant.

7 -----x
8 March 23, 2017
10:15 a.m.

9 Before:

10 HON. P. KEVIN CASTEL,

11 District Judge

12 APPEARANCES

13 JOON H. KIM

Acting United States Attorney for the
Southern District of New York

14 BY: DANIEL S. GOLDMAN

15 BROOKE E. CUCINELLA

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16 Assistant United States Attorneys

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PAUL H. SCHOEMAN

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MICHELLE BEN-DAVID

20 -and-

WRIGHT STANISH & WINCKLER

21 BY: RICHARD WRIGHT

22 - also present -

23 SA Edmund Rom

SA Nicholas Anderson, Federal Bureau of Investigation

24 Raymond McLeod, Defense Tech Support

Holly Meister

25 Sarah Pyun, Government Paralegal Specialists

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Davis - cross

1 THE COURT: Please bring our jurors in. Bring the
2 witness in also.

3 (Jury present)

4 THE COURT: Good morning, ladies and gentlemen. Maybe
5 we're going to get our spring back soon, I hope.

6 Mr. Davis, the Court reminds you that you are still
7 under oath.

8 THE WITNESS: Yes, sir.

9 THE COURT: Mr. Berke, you may continue.

10 MR. BERKE: Thank you, your Honor.

11 THOMAS C. DAVIS,

12 CROSS-EXAMINATION

13 BY MR. BERKE:

14 Q. Mr. Davis, do you recall when we broke yesterday, you had
15 denied that in April of 2016 you had told the prosecutors and
16 the FBI that you did not bet on sports games every week, you
17 did it just for fun, and your bets were usually 100 or \$200?
18 Do you recall saying that in April 2016, sir?

19 A. I think I said my bets ranged from 100 to \$1,000.

20 Q. I'm asking you that yesterday, at the end of your
21 testimony, you denied in April of 2016 telling the FBI and the
22 prosecutors in this case that you didn't bet every week, you
23 bet just for fun, and your bets were usually 100 or \$200?

24 A. This was during the proffer?

25 Q. Yes.

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Davis - cross

1 You deny that you said that, correct?

2 A. I'm sorry. I don't understand the question.

3 Q. My question is, sir, do you recall your testimony at the
4 end of yesterday, Wednesday, when I asked you if you had told
5 the FBI and the prosecutors in April of last year that you
6 didn't bet on sports every weekend, and that your bets were
7 usually 100 or \$200 a bet.

8 Do you recall that, sir, and you denied saying that?

9 A. Yesterday I denied that?

10 Q. Yes.

11 A. I don't recall, I'm sorry.

12 Q. Let me ask you today. Sir, in April of 2016, did you tell
13 the FBI that you did not bet on sports games every week, sports
14 betting was just for fun, and your bets were usually 100 or
15 \$200?

16 A. I don't recall precisely what I said in all the proffers.
17 I'd have to refer to the notes.

18 Q. Okay. Let me show you, sir, what's been marked for
19 identification as 3501-108 which we looked at yesterday. See
20 what it is -- I'm sorry, that's the wrong one.

21 Let me show you what is marked as 3501-17 dated
22 April 13, 2016. First, you see the date, sir?

23 A. Yes.

24 Q. If I can turn your attention to page five, paragraph three.
25 I'll ask you to read that to yourself again.

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Davis - cross

1 I'll ask you again, sir, does that refresh your memory
2 that in April 13, 2016, you told the FBI and the prosecutors in
3 this case that you did not bet on sports games every week,
4 sports betting was just for fun, it's an activity you shared
5 with friends, and your bets were usually \$100 to \$200 per bet?

6 A. I can read what the FBI's notes say, yes.

7 Q. That's not my question, sir. My question is, did you say
8 that?

9 A. I don't recall saying that precisely, no.

10 Q. Do you deny saying it?

11 A. What I said was I don't recall saying that precisely.

12 Q. If you said that, that would be a lie, correct?

13 A. Counselor, I just don't recall saying that precisely.

14 Q. That's not my question, sir. My question is if you had
15 said that, that would not be true, would it?

16 A. No, I don't think that's totally accurate, no.

17 Q. You bet a lot higher stakes than that, correct?

18 A. Occasionally I did, yes.

19 Q. Not occasionally. Most weekends. You called it "dimes."
20 You were betting one dime, two dimes, three dimes, four dimes
21 sometimes on games that you wanted to bet on, isn't that right,
22 sir?

23 A. I don't recall precisely how much I bet every weekend.

24 THE COURT: What time period are we talking about,
25 sir?

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Davis - cross

1 MR. BERKE: I'm talking about the period from -- thank
2 you, your Honor.

3 Q. From 2012 all the way to 2016. Do you recall, sir, using
4 the phrase "dimes"?

5 A. Sure.

6 Q. One dime is a thousand dollars, correct?

7 A. Yes, it is.

8 Q. Do you recall, sir, that you would often talk about betting
9 two dimes on a game, three dimes on a game; do you recall that,
10 sir?

11 A. It would be highly unusual for me to bet three dimes on a
12 game.

13 Q. All right. Let me show you what's been marked for
14 identification as DX 4250. Sir, if we can make that a little
15 bigger. Would you go down, please. I'm sorry. Go up a little
16 bit.

17 Sir, do you see? I'd ask you to review this.

18 A. All right.

19 Q. I would ask that if we could show the sentence beginning
20 "I'm not that confident."

21 A. I'm sorry. Where are you?

22 Q. I'm going to show you in a second. Right there.

23 Sir, my question is, does that refresh your
24 recollection that in October of 2013, in talking about a game
25 you said you weren't that confident, so you just took three

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Davis - cross

1 dimes, and then you told your friend Tim Byrne thinking he
2 might want to split it?

3 A. Yes, I think that's accurate.

4 Q. That's \$3,000?

5 A. Yes, it is.

6 Q. I could show you an awful lot of e-mails that you are doing
7 that. That's not an unusual bet.

8 A. I don't think you can show me very many e-mails where I bet
9 three dimes. I've already said that was highly unusual.

10 Q. Well, let's go some more. How about I show you DX 4679.
11 Why don't we go to DX 4861.

12 Do you recall, sir, December 29, again e-mailing with
13 your friend Tim Byrne. Do you recall, sir, on that date, you
14 had two dimes bet on the under? Do you recall that, sir, just
15 one bet, one game, do you recall that, sir, college football?

16 A. Yes, I think that's accurate, yes.

17 Q. Okay. How about we go to -- why don't we do this, sir.
18 Why don't we go to DX 5318. 5317.

19 Sir, you recognize this is a screen shot of your
20 Ibettor.com account, correct?

21 A. Okay.

22 Q. Do you recall, sir, you bet \$2,200 on Villanova to win in
23 March of 2016?

24 A. Yes, I think --

25 Q. Do you recall, sir, that would be two dimes plus 200,

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Davis - cross

1 correct?

2 A. Yes.

3 Q. Do you recall, sir, that in your Ibettor account at that
4 date you had \$70,000 available for bets and you were down
5 28,000 just at that time based on your sports betting, correct?

6 A. I don't recall that, but it looks like that's the case,
7 yes.

8 Q. Isn't it a fact, sir, when you were trying to get your deal
9 with the government back in April of 2016, you wanted to
10 minimize your gambling so they would think more highly of you
11 and give you the deal you wanted so you could avoid jail
12 altogether? Isn't that true, sir?

13 A. I don't think I ever tried to minimize my gambling. I
14 think I was straightforward about it.

15 Q. You also tried, sir, to minimize your discussions with
16 Mr. Walters about sports and gambling, didn't you, sir?

17 A. With regard to whom?

18 Q. With regard to discussions you had on the phone with him
19 all the time about sports and gambling. You tried to minimize
20 that as well, didn't you, sir?

21 A. With regard to whom?

22 Q. With regard to the FBI and the prosecutors, when you were
23 trying to get your deal.

24 A. I think I was straightforward in my testimony with the
25 prosecutors.

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Davis - cross

1 Q. Sir, do you recall yesterday you agreed that you had told
2 them in April of 2016 that Mr. Walters rarely gave you
3 information about sports gambling, and you would only sometimes
4 ask him, and you spoke infrequently with Mr. Walters about
5 sports or gambling?

6 Do you remember you agreed that you had said that to
7 them in April of 2016?

8 A. Yes, I think that's accurate.

9 Q. That was a lie, sir, wasn't it?

10 A. No. I still think that's accurate. I spoke to him
11 infrequently about sports gambling.

12 Q. Sir, isn't what happened is the prosecutors saw all your
13 e-mails with your friend where you're talking about betting
14 dimes here and three dimes and four dimes and talking about
15 your friend in Las Vegas who gave you a tip, and they
16 confronted you that your prior statements were not true, after
17 you had your deal? Isn't that true, sir?

18 MS. CUCINELLA: Objection. Compound question. There
19 is so much in there, if he could unpack it.

20 THE COURT: Rephrase.

21 Q. Isn't it true, sir, that the prosecutors found your e-mails
22 where you're talking to all your friends about betting three
23 dimes and two dimes and relying on your friend in Las Vegas for
24 sports tips? Isn't that true, sir?

25 A. I can assure --

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Davis - cross

1 THE COURT: The question you're asking is whether the
2 prosecutors found the e-mails?

3 MR. BERKE: And confronted him.

4 THE COURT: You didn't include that. So rephrase your
5 question.

6 Q. Didn't the prosecutors, sir, confront you with the fact
7 they found your e-mails with your friends indicating you were
8 betting two dimes, three dimes on games, and you were relying
9 on advice from your friend in Las Vegas?

10 A. I don't recall the prosecutors ever showing me the e-mails.
11 The e-mail thread about my gambling, no.

12 Q. They told you about it though, right? They told you they
13 found those e-mails?

14 A. I don't recall that either, to be frank with you.

15 Q. Sir, isn't it a fact that last month you changed your
16 statements to them, and last month for the first time you told
17 them that you would talk on the telephone, exchange text
18 messages with Mr. Walters regarding sports events. Mr. Walters
19 would share his betting strategy with you, and you would
20 discuss the spread on various upcoming games.

21 Didn't you tell the prosecutors that for the very
22 first time last month?

23 A. I think I did say that. I think that's accurate.

24 Q. Isn't it a fact, sir, that the reason you told them a
25 different story at the beginning when you were trying to get

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Davis - cross

1 your deal is because you wanted to say all those phone calls
2 you had with Mr. Walters was about Dean Foods and tips, as
3 opposed to sports and sports gambling. That's why you didn't
4 admit that back when you were trying to get your deal, and you
5 waited until you already had your deal locked in.

6 Isn't that true, sir?

7 A. Can you rephrase your question? I'm not sure I follow.

8 Q. Isn't it true, sir, you told them at the beginning when you
9 were trying to get your deal that you didn't speak much to
10 Mr. Walters about sports or betting, because you wanted to say
11 that all those calls you had with him were always about Dean
12 Foods and supposed tips you were giving him?

13 A. I think I've been totally straightforward with the
14 prosecutors about my phone calls with Mr. Walters.

15 Q. Yes or no, sir?

16 A. I don't know the question. You can ask me the question
17 again. It's kind of hard to follow your questions sometimes.
18 They're linked together.

19 Q. Sir, isn't it a fact that after meeting with the
20 prosecutors over 23 times for over one year, the first time you
21 ever told them that you gave material non-public information to
22 Mr. Walters because you wanted sports bets, was just a few
23 weeks ago on February 28?

24 A. I -- I don't recall the first time I told them that.

25 Q. Let me show you what's been marked for identification as

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Davis - cross

1 3500-108. First look at the date, sir. Now I'm going to show
2 you the first paragraph.

3 MR. BERKE: First paragraph, please. Thank you. The
4 paragraph right after. "In exchange." Thank you. Thank you,
5 Mr. McLeod.

6 Q. Read that to yourself, please. My first question, sir,
7 does that refresh your memory on February 28 you told the
8 prosecutors that you gave Mr. Walters illegal inside
9 information because you were hoping to gain from Mr. Walters'
10 insights about sports gambling, particularly football, among
11 other things?

12 A. I think that's accurate, yes.

13 Q. You told them that on February 28?

14 A. Yes, I think that's accurate.

15 Q. Isn't it also a fact, sir, that you never said that to the
16 prosecutors or the FBI in any of your 24 meetings with them
17 over the course of greater than a year prior, isn't that true,
18 sir?

19 A. No. I would disagree with that statement.

20 Q. That would be an untrue statement?

21 A. That's correct, that's my view. I told them about it over
22 a year ago.

23 Q. So it's your testimony when you began over a year ago, you
24 told them about it. Is that your testimony, sir?

25 A. I certainly did.

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Davis - cross

1 Q. Are you being as truthful about that as everything else in
2 your testimony?

3 A. Yes, sir.

4 Q. Sir, in 2016 you also placed bets through a bookie,
5 correct?

6 A. Yes.

7 Q. You still place a bet through a bookie?

8 A. No.

9 Q. When did you stop, sir?

10 A. Certainly after I signed the cooperation agreement with the
11 government.

12 Q. When you signed the agreement you were still using a
13 bookie, weren't you, sir?

14 A. No.

15 Q. You weren't using John Pool?

16 A. No.

17 Q. When did you stop, sir?

18 A. When I signed the cooperation agreement.

19 Q. That day?

20 A. As far as I can recall, yes.

21 Q. While you were cooperating for -- it was many months you
22 were cooperating, correct?

23 A. Yes.

24 Q. February, March, April, first half of May, correct?

25 A. Yes.

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Davis - cross

1 Q. You were using your bookie throughout that time, correct?

2 A. I don't recall that, no.

3 Q. Do you recall telling the prosecutors you were?

4 A. I recall telling the prosecutors I used a bookie.

5 Q. Do you recall telling them that you were using him while
6 you were meeting with them over many months?

7 A. I don't recall that precisely, no.

8 Q. Let me show you what's been marked for identification as
9 3501-11. You see the date March 18, 2016. You see that, sir?

10 A. Yes, I see it.

11 THE COURT: Have you seen this document before?

12 THE WITNESS: No, sir, I haven't.

13 THE COURT: Okay.

14 Q. Directing your attention to page three of seven, paragraph
15 six. Under the heading, second paragraph under the heading.
16 My question to you, sir -- give you a chance to read it.

17 My question to you, sir, does that refresh your memory
18 that in March of 2016 you told the prosecutors that you had
19 placed and you continued to place bets on college football and
20 college basketball games through a bookie named John Pool?

21 A. I can certainly read the statement. Yes.

22 Q. So you're committing a crime, you agree that's a crime to
23 bet through a bookie in Dallas, correct?

24 A. Yes.

25 Q. You were committing crimes while you were meeting with the

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Davis - cross

1 prosecutors, correct?

2 A. I'm not sure what period of time I continued to place bets
3 with John Pool.

4 Q. Sir --

5 A. This says "continues to place." I'm not sure what that's
6 referring to.

7 MS. CUCINELLA: I'm going to object, your Honor. It
8 is unclear right now what the witness's recollection is. He's
9 reading a document that's not in evidence. So if Mr. Berke
10 could clarify his question rather than relying on reading the
11 document.

12 THE COURT: You're welcome to offer the document into
13 evidence if you'd like to.

14 MR. BERKE: Absolutely, your Honor. I would offer the
15 paragraph that we're reading of 3501-11 into evidence, your
16 Honor.

17 THE COURT: You're not offering the document?

18 MR. BERKE: I don't think I could. But I'm offering
19 this, your Honor.

20 THE COURT: All right. Well, do you want to offer a
21 portion of the document?

22 MR. BERKE: I do, your Honor.

23 THE COURT: Any objection?

24 MS. CUCINELLA: May we have one moment, your Honor.

25 THE COURT: Yes.

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Davis - cross

1 MS. CUCINELLA: Your Honor, I don't think what the
2 witness is testifying to is actually inconsistent, so we think
3 it is improper to offer this paragraph at this time. We think
4 that Mr. Berke needs to establish what the witness's memory is,
5 based on proper questioning, and then I think we'll be in a
6 better position to go from there.

7 THE COURT: All right. I'm going to sustain the
8 objection for the moment. If you establish an inconsistency,
9 I'll let you have the document in.

10 MR. BERKE: Thank you, your Honor.

11 Q. Sir, in March 18, 2016, did you tell the FBI and the
12 prosecutors that you place and you continue to place bets on
13 college football and college basketball through a bookie named
14 John Pool in Dallas, Texas?

15 A. I don't recall saying that precisely, no. That's what the
16 FBI notes say. I don't recall saying that.

17 Q. You deny saying that, sir?

18 THE COURT: Do you deny saying that? That's the
19 question.

20 THE WITNESS: Your Honor, I just don't recall saying
21 that.

22 THE COURT: Okay. That's your answer.

23 Q. Did you deny that you were using a bookie while you were
24 trying to get your cooperation deal with the prosecutors?

25 A. I don't think I was ever asked whether I was still using a

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Davis - cross

1 bookie at the time I was proffering.

2 Q. My question to you, sir, is did you deny that you were
3 using a bookie during the time you were proffering and meeting
4 with the prosecutors trying to get your deal?

5 A. Counselor, I really don't recall whether I was still using
6 the bookie in February, March and April of 2016. I just don't
7 recall.

8 MR. BERKE: Your Honor, I would offer the paragraph
9 now as 3501-11-A.

10 THE COURT: I think the witness has said he doesn't
11 recall.

12 MR. BERKE: Okay.

13 Q. Sir, you would agree with me if you were using a bookie,
14 you would be committing a crime while you were trying to get
15 your deal with the prosecutors, correct?

16 A. Yes.

17 Q. That would be a violation of what you were supposed to be
18 doing, correct, sir?

19 A. A violation of what?

20 Q. You weren't supposed to be committing crimes while you were
21 trying to get your cooperation agreement, were you?

22 A. I wasn't supposed to be committing a crime ever.

23 Q. You definitely weren't supposed to be doing it when you
24 were meeting with them. You weren't supposed to lie to them,
25 you weren't supposed to commit crimes, correct?

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Davis - cross

1 A. I certainly didn't lie to them. Period.

2 Q. Sir, did you think it was okay to commit crimes while you
3 were meeting with the prosecutors trying to get your deal?

4 A. No. I don't think it's okay.

5 Q. Sir, do you recall giving testimony the first day of your
6 testimony, that you said on two occasions Mr. Walters put his
7 arm around you and said how's the milkman, asking you for
8 information? Do you recall that testimony, sir?

9 A. Yes, I do.

10 Q. Do you recall, sir, you said the first time was in early
11 April when you were in Palm Springs, it was after playing golf
12 at The Reserve. And you said Mr. Walters put his arm around
13 your shoulder and said how's the milkman, and you said
14 something like "looking good." Something to that effect,
15 correct?

16 A. That's not correct. It was not before I played golf, it
17 was after we played golf. That's what I testified to.

18 Q. Sir, I believe you said -- after playing golf. You were at
19 the golf course at The Reserve, correct?

20 A. Yes, sir.

21 Q. Your testimony is he put his arm around your shoulder and
22 he asked you how's the milkman.

23 A. That's correct.

24 Q. That was in April of 2008, correct?

25 A. That's my recollection, yes.

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Davis - cross

1 Q. You said it happened again. You said you were playing at a
2 golf tournament, the Cyder Cup, in September of 2008, correct?

3 A. Yes.

4 Q. Mid-September, correct?

5 A. Yes.

6 Q. You said again after the golf tournament you recall after
7 playing, Mr. Walters putting his arm around you and saying
8 how's the milkman, correct? Asking you that question?

9 A. Yes.

10 Q. You said again, "doing great, looking good." Right? In
11 substance?

12 A. I think I said something slightly different than that. But
13 yes.

14 Q. That was the message you conveyed, it was looking good.
15 Right? Very positive, correct?

16 A. Yes.

17 Q. I want to show you what's in evidence as GX 2001. Sir, you
18 see on the bottom of this, first, you see the date up top is
19 2008?

20 A. Yes.

21 Q. See on the bottom it says the green represents Mr. Walters'
22 purchases?

23 A. Yes, I see it.

24 THE COURT: Have you seen this document before?

25 THE WITNESS: No, your Honor, I have not.

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Davis - cross

1 Q. You see, sir, that you see the lines from April 1st, '08 to
2 May 1st, correct? You see that on the bottom?

3 A. Yes.

4 Q. And you see, sir, that when you said that Mr. Walters put
5 his arm around you in early April and asked you, and you told
6 him "looking good," Mr. Walters did not buy any shares of Dean
7 Foods all the way up until the next earnings announcement on
8 April 30, 2008. Do you see that, sir? There is no green from
9 April 1st all the way to April 30. No green. Do you see that,
10 sir?

11 A. Yes, I see that.

12 Q. You also see, sir, if you go further down the same chart,
13 you see September '08, right?

14 A. Yes.

15 Q. And you see, sir, that the next earnings announcement is
16 November 4, 2008, correct?

17 A. Yes, that's correct.

18 Q. You see again, sir, after you claim the second time
19 Mr. Walters put his arm around you and asked you how the
20 milkman is doing, again, there are no purchases until right
21 after the November 4, 2008 announcement, correct?

22 A. I see that.

23 THE COURT: Let me see counsel at sidebar with the
24 exhibit.

25 (Continued on next page)

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Davis - cross

1 (At the sidebar)

2 THE COURT: I'm sure I must be misunderstanding or
3 misreading something. And I don't think anybody would do
4 anything deliberately here. But, I'm looking at this chart,
5 Government Exhibit 2001, and it looks to me that there were
6 purchases by Mr. Walters between June 15 and June 30.

7 MR. BERKE: There are, your Honor. What I was
8 referring to, what I was asking about is the earnings
9 announcement up here, April 30, because he said it was good
10 news. That was the next earnings announcement that announced
11 the reports. So I was saying between April and the earnings
12 announcement of April 30, there were no purchases. I asked him
13 specifically.

14 THE COURT: I thought you then asked him there weren't
15 any purchases until the earnings announcement of June.

16 MR. BERKE: No. Then I went to September, because he
17 said the second time he did it was in early September related
18 to the Cyder Cup. So I went to September and showed no
19 purchases between that time and the next earnings announcement
20 in November. So I was going from the time of the supposed tip
21 to the next earnings announcement, because there was two.
22 There was one in April, according to his testimony, and one in
23 September. So I was doing April to the earnings announcement,
24 and September to the November earnings announcement, and there
25 are no purchases.

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Davis - cross

1 THE COURT: All right. In that event I'll leave it
2 for redirect then.

3 MS. CUCINELLA: Yes, we agree there is nothing --

4 THE COURT: Thank you.

5 MR. GOLDMAN: One thing, your Honor. If we could keep
6 close tabs on argumentative questioning. This is very
7 argumentative.

8 THE COURT: Well, you have a pair of lungs, if you
9 find a question argumentative, it's your job to object.

10 MR. GOLDMAN: Understood.

11 THE COURT: You don't sit there like choir boys and
12 choir girls and let the big bad judge sua sponte interpose an
13 objection. If you have something to say, exercise your rights.

14 MS. CUCINELLA: Understood, your Honor.

15 (Continued on next page)

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Davis - cross

1 (In open court)

2 MR. BERKE: If I may, your Honor?

3 THE COURT: You may.

4 BY MR. BERKE:

5 Q. Mr. Davis, do you believe the jurors in this courtroom
6 should believe you because you took an oath to tell the truth?

7 A. Yes, I do.

8 Q. Do you believe the jurors in this courtroom should believe
9 you because you're adamant at what you're claiming to be the
10 truth?

11 A. Yes, I do.

12 Q. Mr. Davis, do you think the jurors in this courtroom should
13 believe you because you'll get in trouble if you lie?

14 MS. CUCINELLA: Objection, your Honor. This is just
15 argumentative.

16 THE COURT: Sustained.

17 Q. Sir, you testified under oath before, didn't you?

18 A. Yes, I have.

19 Q. You testified before the Securities and Exchange
20 Commission, correct?

21 A. Yes, sir, I did.

22 Q. Sir, when you testified before the SEC, you stood up and
23 you took the exact same oath you took here today, correct?

24 A. I did, yes.

25 Q. You were wearing a similar suit and tie, you probably

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Davis - cross

1 looked very similar to what you look today, correct?

2 A. I don't recall what I was wearing.

3 Q. But you swore to tell the truth, correct?

4 A. Yes, I did.

5 Q. You were adamant you were telling the truth, correct?

6 A. I was sworn to tell the truth.

7 Q. You told the SEC you were being truthful. You didn't tell
8 them you were lying to them?

9 A. I did tell them that, that's correct.

10 Q. You knew you could get in trouble if you lied, correct?

11 A. I have gotten in trouble.

12 Q. You knew it at the time you gave your testimony, didn't
13 you, sir?

14 A. I'm sorry, I didn't hear.

15 Q. You knew it at the time you gave your testimony, didn't
16 you, sir?

17 A. I knew I was lying to the SEC, yes.

18 Q. You knew you could get in trouble for lying, correct?

19 A. Yes.

20 Q. You did it anyway?

21 A. I did, I was trying to conceal my crimes.

22 Q. Well, let's talk about that, sir. Do you recall you said
23 on direct that you had a strategy going into your SEC
24 testimony? Do you recall saying that?

25 A. Yes.

H3N3WAL1

Davis - cross

1 Q. I want to talk to you about that strategy. You were
2 expecting to be asked about Dean Foods, correct?

3 A. Yes, I was.

4 Q. And you were represented by Tom Melsheimer, a very well
5 known, very well experienced lawyer, correct?

6 A. Yes.

7 Q. He was somewhat famous -- well, he was very well known for
8 representing people in this context, correct?

9 MS. CUCINELLA: Objection.

10 THE COURT: Sustained.

11 Q. He was very experienced in this area?

12 MS. CUCINELLA: Objection.

13 THE COURT: Sustained.

14 Q. You met with Mr. Melsheimer an awful lot to talk about and
15 prepare for your testimony, correct?

16 A. For the SEC?

17 Q. Yes.

18 A. I had a lot of meetings with Mr. Melsheimer, not only to
19 prepare for the SEC, but a variety of other things.

20 Q. But you met with him to prepare for the SEC testimony,
21 correct?

22 A. Yes, I did.

23 Q. You told him in preparing for what you thought would be
24 about Dean Foods, you told him that you never gave any improper
25 illegal information to Mr. Walters, isn't that true?

H3N3WAL1

Davis - cross

1 A. Yes, that's correct.

2 Q. And you went over documents with him, and you prepared, and
3 he went over every possible question the SEC could potentially
4 ask about Dean Foods and you prepared for it, correct?

5 MS. CUCINELLA: Objection. It's privileged.

6 MR. BERKE: The door was open, your Honor. He's
7 already testified on direct about it.

8 THE COURT: I think so. Go ahead.

9 A. I didn't hear the question. I'm sorry.

10 Q. In preparing, Mr. Melsheimer asked you all the sorts of
11 questions that he thought the SEC could ask you about Dean
12 Foods and your relationship with Mr. Walters, correct?

13 A. I suppose he did.

14 Q. You prepared and gave him the answers that you told him
15 were truthful and honest and based on real facts, correct?

16 A. I was lying to Mr. Melsheimer at the same time, yes.

17 Q. I didn't ask you that, sir. I'm not asking you. What I'm
18 asking is what you said back then. Back then you told
19 Mr. Melsheimer that was the truth, correct?

20 A. I did tell him that, yes.

21 Q. On every fact and every question that he asked you in
22 preparation, you gave him an answer that made clear you didn't
23 do anything illegal with regard to Mr. Walters, correct?

24 A. Yes, I told him that.

25 Q. And at the end, he was satisfied that he could bring you in

H3N3WAL1

Davis - cross

1 the SEC for you to repeat that you didn't do anything wrong,
2 correct?

3 A. He was satisfied?

4 Q. Yes, that he could bring you in -- he took you into the SEC
5 to give testimony, didn't he?

6 MS. CUCINELLA: Objection as to Mr. Melsheimer being
7 satisfied.

8 MR. BERKE: I'll rephrase.

9 THE COURT: Sustained.

10 Q. After the preparation, Mr. Melsheimer took you to the SEC
11 and represented you before the SEC where you gave the same
12 answers about Mr. Walters and your relationship that you gave
13 with him when you were preparing, correct?

14 A. Yes, that's correct.

15 Q. But the surprise at the SEC is they asked you questions
16 about Shelter Golf that you didn't expect. Isn't that true,
17 sir?

18 A. Yes, I think that's accurate.

19 Q. When they asked you questions about Shelter Golf, they
20 seemed to have figured out that you stole money from Shelter
21 Golf, didn't they?

22 A. They asked me a lot of questions about Shelter Golf, yes.

23 Q. You hadn't prepared for that with Mr. Melsheimer, had you?

24 A. I don't recall whether we discussed that or not.

25 Q. You lied to the SEC about Shelter Golf, didn't you?

H3N3WAL1

Davis - cross

1 A. I did, yes.

2 Q. You lied repeatedly, didn't you?

3 A. Yes, I did.

4 Q. You knew after the testimony that they knew you lied,
5 correct?

6 MS. CUCINELLA: Objection.

7 MR. BERKE: Withdrawn. I'll get to that.

8 Q. Sir, Mr. Melsheimer -- withdrawn.

9 Sir, I want to ask what you said to the SEC. And I
10 would ask to put before you what is marked as Defense Exhibit
11 4951 so we have it, if we may put that on the screen for the
12 witness.

13 My question, sir, is do you recall being asked "Well,
14 the example you gave, are there situations where the kind of
15 information China and how it impacts the milk industry and Dean
16 Foods, that information might be information that Dean Foods
17 has but is not yet public yet?" And you answering "No, no. I
18 never provided him any confidential information whatsoever.
19 I'm certain of that."

20 Were you asked that question and gave that answer,
21 sir?

22 A. Yes, I think that's accurate.

23 Q. I'd like to go if I could go to page 78, line 19. That is
24 your testimony on the screen, correct?

25 A. Yes.

H3N3WAL1

Davis - cross

1 MR. BERKE: Your Honor, under 801(d)(1)(A), I would
2 ask to introduce that question and answer. And we have it
3 marked as 4951-A.

4 THE COURT: Any objection?

5 MS. CUCINELLA: No objection.

6 THE COURT: Received.

7 (Defendant's Exhibit 4951-A received in evidence)

8 MR. BERKE: If I may publish it to the jury, your
9 Honor, that question and answer.

10 THE COURT: You may.

11 MR. BERKE: The question and the answer, please.
12 Mr. McLeod, if it would be easier just just to put up 4151-A.

13 Q. This is your sworn SEC testimony, correct, sir?

14 A. Yes.

15 Q. May 18, 2015. If I could just publish it. And sir, the
16 question you were asked is "Well the example you gave are" --
17 you see the question we went over. Can you read your answer,
18 sir?

19 A. In the middle paragraph?

20 Q. Yes.

21 A. It says "No, no. I never provided him any confidential
22 information whatsoever. I'm certain of that. And whatever we
23 discussed was typically available by analysts. So yeah, I'm
24 certain of that."

25 Q. Sir, analysts, those are professionals who work for banks

H3N3WAL1

Davis - cross

1 who cover the company, correct?

2 A. Yes.

3 Q. They issue reports, correct?

4 A. Yes.

5 Q. And those reports are often reports based on discussions or
6 information that the analysts may have gotten from the company
7 at various things, correct?

8 A. Yes, I think so.

9 Q. You regularly reviewed analyst reports of Dean Foods,
10 correct?

11 A. Yes.

12 Q. You discussed it with Mr. Walters, correct?

13 A. On occasion, yes.

14 Q. So we looked at yesterday you sending an analyst report in
15 2013, do you recall that, sir?

16 A. Yes, I did.

17 Q. Let me now go to page 80 and Exhibit 4951-A. Just for the
18 witness. I think we just need the end of the answer.

19 Sir, this also reflects questions and answered you
20 were asked on your SEC testimony?

21 A. Yes.

22 MR. BERKE: Your Honor, I would offer this. And for
23 convenience if your Honor would agree, I can either mark them
24 as A, B, C, D or mark them all as A, the collection we're going
25 to go through. There is maybe six of them.

H3N3WAL1

Davis - cross

1 THE COURT: Why don't you mark them as A, B, C, D. I
2 think that's more convenient. So you are offering this?

3 MR. BERKE: I'd offer this as 4951-B.

4 THE COURT: Any objection?

5 MS. CUCINELLA: No objection.

6 THE COURT: Received.

7 (Defendant's Exhibit 4951-A received in evidence)

8 MR. BERKE: May I publish it, please?

9 THE COURT: Yes.

10 Q. Sir, you were asked by the Securities and Exchange
11 Commission while under oath "We have gone over your background,
12 but did Mr. Walters know what your position was at Dean Foods?"

13 Would you read the answer, sir?

14 A. "Yes, I feel certain he did."

15 Q. "Why do you feel certain?"

16 A. "I guess I assumed he did that. He never asked me any
17 leading questions about Dean Foods, so I felt like he respected
18 the fact that I was on the board and didn't want to put me in
19 that kind of position, so he never did."

20 Q. I'll now show you if we can go to page 72, line 22.

21 Question and answer beginning there.

22 Sir, does that reflect questions and answers you were
23 asked during your SEC testimony?

24 A. Yes.

25 MR. BERKE: Your Honor, I would offer the question and

H3N3WAL1

Davis - cross

1 answer beginning on page 72 as 4951-C.

2 MS. CUCINELLA: No objection.

3 THE COURT: Received.

4 (Defendant's Exhibit 4951-C received in evidence)

5 Q. Sir, I'd ask you to read the answers again. "Did he ever
6 ask you if Dean Foods was going to get around to spinning off
7 WhiteWave?"

8 A. "Never."

9 Q. "Did you ever tell him that Dean Foods was considering
10 spinning off WhiteWave?"

11 A. "Never."

12 Q. "Did you ever give him a preview of what Dean Foods'
13 earning were prior to an announcement?"

14 A. "Never."

15 Q. Now directing your attention to -- and Mr. Davis, when you
16 were giving those answers, did your facial expression look any
17 different than it does today?

18 A. I'm sorry?

19 Q. Did you and your face look any different than it does
20 today?

21 MS. CUCINELLA: Objection.

22 THE COURT: I'll allow it go ahead. If you know.

23 A. I don't recall what my face looked like.

24 THE COURT: Do you know what your face looked like?

25 THE WITNESS: At the time of the testimony?

H3N3WAL1

Davis - cross

1 THE COURT: Yes.

2 THE WITNESS: I don't think I looked any different
3 than I do today.

4 Q. In fact, sir, you told the government, the federal
5 government on multiple, multiple occasions for well over a year
6 that you did not ever give any information about Dean Foods
7 that was improper to Mr. Walters, isn't that true?

8 A. Could you repeat the question? I'm sorry.

9 Q. For well over a year you told the government and others
10 that you didn't give any improper information to Mr. Walters,
11 isn't that true?

12 A. Yes, I lied, yes.

13 Q. Well, I'm asking you, sir, about what your position was
14 back then, before you tried to make a deal. Back then you
15 didn't tell them you were lying, did you?

16 A. No, I didn't. I was trying to conceal my guilt.

17 Q. You told them it was the truth, didn't you, sir?

18 A. No, I did not.

19 Q. You told them it was the truth, didn't you, sir?

20 A. At the time of the testimony, I told them it was the truth,
21 yes.

22 Q. And when you were explaining about the sorts of information
23 that you gave to Mr. Walters, you believed that information
24 that we just went over, that was proper for you to share,
25 correct?

H3N3WAL1

Davis - cross

1 A. I'm not sure, counselor, which information you're referring
2 to.

3 Q. The questions and answers we just read, you believed that
4 what you said you shared with Mr. Walters, that that was
5 entirely proper for you to share with Mr. Walters, it wasn't
6 illegal, correct?

7 MS. CUCINELLA: Objection. It's a compound question.

8 THE COURT: Rephrase the question.

9 Q. When you talked about sharing information that analysts
10 had, your intent was to convey to the SEC that that was
11 perfectly okay, correct?

12 A. Yes, the analysts' information, yes.

13 Q. When you told the SEC that you talked about things like
14 milk prices and things at a higher level that could affect the
15 industry and Dean Foods, you intended to convey that was
16 proper, correct?

17 A. Yes, I did.

18 Q. You recall, sir, that in 2014, the FBI showed up to your
19 home?

20 A. Yes, I recall that very well.

21 Q. That was a surprise, correct?

22 A. Yes.

23 Q. You weren't expecting them?

24 A. No.

25 Q. It was not a happy moment to have the FBI at your home,

H3N3WAL1

Davis - cross

1 correct?

2 A. I think that's accurate.

3 Q. They came and they wanted to ask you questions, correct?

4 A. Yes.

5 Q. And you didn't have a lawyer there, it was just you and the
6 FBI, the surprise visit, correct?

7 A. Yes.

8 Q. They wanted to ask you about whether you ever gave any
9 improper information to Bill Walters, correct?

10 A. Yes, they did.

11 Q. And you emphatically said you never gave illegal inside
12 information to Mr. Walters, and you said you were certain of
13 that. Isn't that true, sir?

14 A. Yes, I lied to the FBI.

15 Q. Sir, I understand that's what you're saying today. You
16 didn't tell the FBI you were lying, did you, sir?

17 A. I did not.

18 Q. You told them that was the truth, correct, sir?

19 A. When they interviewed me at my house, I think it's a matter
20 of record what I told them, yes.

21 Q. You told them that, correct, sir?

22 A. Yes.

23 Q. You know it is a crime to lie to a federal officer,
24 correct?

25 A. I certainly know that well today.

H3N3WAL1

Davis - cross

1 Q. You knew it back then too, didn't you, sir?

2 A. Yes. I was aware of that.

3 (Continued on next page)

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H3ndwal2

Davis - cross

1 Q. You told the agents not only were you certain that you
2 didn't give any illegal information to Mr. Walters but that
3 you, sir, do not tolerate that kind of behavior and you fired
4 people in the past for insider trading; isn't that true, sir?

5 A. Yes, that's accurate.

6 Q. And it was true what you said, you had fired people in the
7 past for insider trading, haven't you?

8 A. Yes, I did.

9 Q. You also said -- you told the FBI openly that you had done
10 some business deals together and you had invested in companies
11 together, correct?

12 A. Yes.

13 Q. You told them that you and Mr. Walters very frequently
14 discussed the stock market and capital markets and general
15 things that could influence the price of a stock, correct?

16 A. Yes.

17 Q. You told the agents that you talked about Dean Foods, but
18 all the information was proper that you talked about with
19 Mr. Walters, correct?

20 A. Yes, I did.

21 Q. You told them that you understood that Mr. Walters likes to
22 talk to a lot of people, didn't you, sir?

23 A. I didn't hear the question. Sorry.

24 Q. You told them that you understood that Mr. Walters like to
25 talk to a lot of people about the stock market and his

H3ndwal2

Davis - cross

1 investments, including Dean Foods, correct?

2 A. I don't recall saying that, no.

3 Q. Sir, didn't you tell the FBI that you understood that
4 Mr. Walters invested in Dean Foods because he respected you, he
5 trusts you, and he has confidence in you?

6 A. I don't recall all the specifics of the interview.

7 Q. Let me show you, sir, what's been marked for identification
8 as 3501-3. And I'll first show you the date and the first
9 couple of lines.

10 Do you see the date, sir?

11 A. Yes.

12 Q. Do you want to see the first two paragraphs -- well, the
13 first paragraph so you can see what it is.

14 Do you see what it is, sir?

15 A. Yes.

16 THE COURT: Have you ever seen this before?

17 THE WITNESS: No, sir, I have not.

18 Q. Let me direct your attention, if I may, to the third page,
19 second paragraph, last sentence. I would ask that you read it
20 to yourself.

21 (Pause)

22 My question to you, sir, is does that refresh your
23 recollection that you told the FBI, when they showed up on a
24 surprise visit to your home in 2014, that you believed
25 Mr. Walters respects you, trusts you, and has confidence in

H3ndwal2

Davis - cross

1 you?

2 A. I think that's an accurate reflection of what I said to the
3 FBI, yes.

4 Q. Did you also tell them that's why you thought he invested
5 in Dean Foods?

6 A. I think this is an accurate reflection of what I said to
7 them, yes.

8 Q. And, sir, isn't it a fact that later, after the FBI visited
9 you in 2014, after your SEC testimony, you authorized your
10 lawyers to make a detailed presentation to the SEC, where they
11 would present a lot of material information to defend what you
12 had been telling Mr. Melsheimer that you did nothing wrong with
13 Mr. Walters; isn't that true, sir?

14 A. I authorized my legal counsel to prepare a presentation,
15 yes.

16 Q. And you reviewed it before they gave it, correct, sir?

17 A. I saw it, yes.

18 Q. And you understood that the presentation explained -- the
19 presentation addressed your actions, correct?

20 A. The presentation addressed a lot of things, not just my
21 actions but also Mr. Walters' trading activities.

22 Q. Yes. So first it addressed your actions, correct?

23 A. As far as I recall, yes.

24 Q. And went through all the details why -- all the reasons why
25 your conduct and actions and all -- and everything you did with

H3ndwal2

Davis - cross

1 regard to Mr. Walters was innocent, correct?

2 A. Yes. I don't recall the detail of the presentation but I
3 think that's fair.

4 Q. And you recall generally it also addressed phone calls that
5 you had with Mr. Walters, phone records, and went through all
6 the reasons why those were innocent; do you recall that, sir,
7 generally?

8 A. I think there was a portion of the presentation that
9 addressed that, yes.

10 Q. And you recall, sir, that your lawyers also addressed
11 Mr. Walters' trading, as you would say?

12 A. Yes, I think it did.

13 Q. And your lawyers, on your behalf, went through to explain
14 why all those trades were explainable based on public
15 information and what was known in the market; isn't that true,
16 sir?

17 A. I think the presentation did reflect that, yes.

18 Q. Sir, your lawyers on your behalf told the SEC in this
19 presentation that Mr. Walters' trading was not unusual; isn't
20 that true, sir? Unusual for him, isn't that true, sir?

21 A. I'm sorry. Repeat the question.

22 Q. Mr. Walters -- excuse me. Your lawyers, in making a
23 presentation on your behalf, told the SEC that Mr. Walters'
24 trading was not unusual?

25 MS. CUCINELLA: Objection. If he could clarify the

H3ndwal2

Davis - cross

1 question? Mr. Davis wasn't present for the presentation.

2 THE COURT: Yes. Rephrase it.

3 BY MR. BERKE:

4 Q. You reviewed -- you understood that they gave a
5 hundred-page PowerPoint presentation that had statements in the
6 presentation that they were going to show the SEC, correct?

7 A. Yes.

8 Q. And you reviewed that, correct?

9 A. Yes. I saw it, yes.

10 Q. You understood that one slide explained to the SEC why
11 Mr. Walters trading was not unusual; isn't that fair, sir?

12 A. I don't recall every page of the presentation, no.

13 Q. Let me show you --

14 THE COURT: Do you recall that page?

15 THE WITNESS: I don't recall that page, your Honor.

16 Q. Let me show you what's been marked for identification as
17 3501-76. And you see what it is, sir? I would ask you to look
18 at the front page and also down below.

19 A. Yes, I see that.

20 Q. I am going to direct your attention to page 54. I think on
21 the exhibit it is 157, if that's easier. 157 on yours, I
22 believe.

23 OK. I'd ask you to review that to yourself, sir.

24 (Pause)

25 Have you reviewed it, sir?

H3ndwal2

Davis - cross

1 A. Yes.

2 Q. My question, sir, is does that refresh your recollection
3 that the presentation that you reviewed, that your lawyers gave
4 to the SEC, laid out reasons why Mr. Walters' trading was not
5 unusual?

6 A. It certainly says that on the slide, yes.

7 Q. And do you recall, sir, they also presented information to
8 show that Mr. Walters' trading coincided with analyst
9 recommendations and information that was publicly known?

10 A. Yes. I think that's accurate.

11 Q. And do you recall, sir, they presented information in
12 support for the fact that analysts had anticipated and
13 predicted the WhiteWave spin-off?

14 A. I think they -- I don't remember exactly what the
15 presentation said, but I think they referred to analysts'
16 reports on the spin-off, yes.

17 Q. Well, do you recall, sir, that they specifically argued on
18 your behalf, in the slide that you reviewed, that analysts
19 anticipated and predicted the WhiteWave spin-off?

20 A. I don't recall that they predicted that, no.

21 Q. Let me show you, sir, pages 88 to 90 of what we are looking
22 at for identification as 3501-76.

23 I would ask you, sir, just to read that to yourself.

24 (Pause)

25 A. OK. I have read it.

H3ndwal2

Davis - cross

1 Q. Sir, on your behalf, your lawyers told the SEC that
2 analysts had anticipate and predicted the WhiteWave spin-off,
3 correct, before May 2012, correct?

4 MS. CUCINELLA: Objection. These don't all reflect
5 analyst reports, or any of them, actually.

6 MR. BERKE: I actually disagree, your Honor.

7 If we could go to the next page as well. Read that as
8 well.

9 And we'll go to the next page, too.

10 Q. My question for you, sir, is does that refresh your memory
11 that your lawyers, on your behalf, told the SEC that analysts
12 had predicted the WhiteWave spin-off before May 2012?

13 A. Counsel, it looks like to me these are all excerpts from
14 analyst questions or comments, and there was a lot of
15 speculation about the spin-off.

16 Q. I asked you a different question, sir. Let's go to the
17 page before.

18 And the page before. 88.

19 My question, sir, is did your lawyers, on your behalf,
20 tell the SEC that the spin-off of WhiteWave was anticipated
21 well before May 2012? That is my question.

22 A. That's what the headline says on this page, yes.

23 Q. And they also -- in support of that, they cited a lot of
24 analyst reports and other things, correct?

25 A. I'm sorry?

H3ndwal2

Davis - cross

1 Q. In support of that, they cited a lot of analyst reports,
2 correct?

3 A. Yes. I think that's accurate.

4 Q. And other things?

5 A. I don't know what the other things were.

6 Q. Let's go to page 90.

7 Statements by people at Dean Foods, public statements,
8 correct?

9 A. Yes.

10 Q. And, sir, your lawyers also told the SEC, on your behalf,
11 that the Walters' loans were legitimate, documented, that you
12 were paying on the loans; do you recall that, sir?

13 A. Yes.

14 Q. And they also told the SEC, gave a lot of support, that Tom
15 Davis knows the securities laws and follows them; isn't that
16 true, sir?

17 A. Yes. I think they did tell them that.

18 Q. You had been involved on the board of Dean Foods for a long
19 time, correct?

20 A. Yes.

21 Q. And there came a point in time when they interviewed you,
22 lawyers for Dean Foods interview you after news articles came
23 out to make sure you didn't do anything improper or give any
24 improper information; isn't that right, sir?

25 A. Yes. I recall that.

H3ndwal2

Davis - cross

1 Q. And you told them, these people you had known, from Dean
2 Foods, you swore to them, that you never gave Mr. Walters any
3 information you shouldn't have given him; isn't that true, sir?

4 A. Counselor, I think I said quite clearly I lied to everybody
5 about this, including the Dean Foods' board, including the Dean
6 Foods' in-house counsel.

7 Q. I understand what you are saying right now, sir. You
8 didn't tell them back then you were lying, did you?

9 A. No.

10 Q. You swore to them it was the truth, these people who knew
11 you for so long, that you never gave any information to
12 Mr. Walters that you weren't supposed to give; isn't that true,
13 sir?

14 A. That's what I told them at that time, yes.

15 Q. You told them, you talked to them about Dean Foods --

16 THE COURT: Let the witness answer before you begin
17 the next question.

18 MR. BERKE: I'm sorry. Yes, sir.

19 Q. Were you done, sir?

20 A. Yes.

21 Q. You told them that all the information you shared with
22 Mr. Walters was entirely appropriate and none of it was
23 illegal, correct?

24 A. Yes, I did tell them that.

25 Q. They didn't ask you any questions about Shelter Golf, did

H3ndwal2

Davis - cross

1 they?

2 A. It didn't come up.

3 Q. You told all your circle of friends in Dallas and across
4 the country, in emails and otherwise, after the articles came
5 out, that you did nothing wrong, correct?

6 A. Yes. I think that's a fair statement.

7 Q. We talked about your friend Mr. Byrne. He is a close
8 friend, correct?

9 A. Yes.

10 Q. You told him that, when the article came out about you in
11 the Wall Street Journal that you talked about on direct, that
12 it is no big deal, you are holding your head high, you didn't
13 do anything wrong, correct?

14 A. Yes. I think that's accurate.

15 Q. And in fact, sir, you authorized your lawyers to tell the
16 world, after the article appeared, that you did nothing wrong,
17 correct, sir?

18 A. I don't recall authorizing him, but he certainly made a
19 statement on my behalf.

20 Q. Sir, you knew he made a statement on your behalf that you
21 fully, and without reservation, cooperated with the SEC in
22 their investigation of alleged insider trading in Dean Foods
23 Company from day one and that you have no knowledge of any
24 material nonpublic information about Dean Foods Company being
25 conveyed to Mr. Walters by you or anyone else; isn't that what

H3ndwal2

Davis - cross

1 your lawyer said to the press and the world on your behalf,
2 sir?

3 A. Yes, I think that's accurate.

4 Q. And that was -- that's what you told everyone, including
5 under oath, before you decided to try to make a deal for
6 yourself; isn't that true, sir?

7 A. It's certainly what I told everybody before I decided to
8 tell the truth.

9 Q. Sir, it's what you told everyone before you decided to make
10 a deal, to see if you can make a deal for yourself with the
11 government; isn't that true, sir?

12 A. Yes. I think that's accurate.

13 Q. Sir, you have a lifetime of experience making deals, you
14 know how to make deals; that was your job as an investment
15 banker, make deals, correct?

16 A. That was certainly part of my job, yes.

17 Q. And, also, after you left DLJ and you were working other
18 ways, you knew how to make deals that benefited you, Tom Davis;
19 isn't that right, sir? That's something that you had a lot of
20 experience with?

21 A. I made some good investments from time to time.

22 Q. You know how to make deals that benefit yourself, correct,
23 sir?

24 A. I don't know how you want to characterize that, but.

25 Q. Let me ask you, sir, would you make a false accusation

H3ndwal2

Davis - cross

1 against someone in order to try to get a benefit for yourself?

2 A. I hope I wouldn't. I hope that I would not do that.

3 Q. Not my question, sir. I'm not asking how aspirational you
4 are. I'm asking whether you would.

5 A. I don't think I would do that on purpose, no.

6 Q. Sir, Bob Utley used to be a friend of yours, correct?

7 A. I hope he is still a friend of mine.

8 Q. Bob and Brian Utley, they were involved in Periscope with
9 you, correct?

10 A. Yes.

11 Q. You got into a dispute with them because they had to pay
12 \$27,000 to respond to a subpoena related to the investigation
13 of you, correct, sir?

14 A. There was a bit more to it than that.

15 Q. Well, there was a bit more, but you had a dispute that in
16 part relied on the fact that they thought your role should be
17 limited because there was an issue about paying those fees,
18 correct?

19 A. I think, counselor, you've got your facts wrong slightly.

20 Q. Well, you recall, sir, you had an email exchange with
21 Mr. Utley in which he claimed you had a conflict of interest in
22 representing rollover investors of Periscope and in part
23 because there was a question of who should pay the legal costs
24 of \$27,000 they had to pay to respond to an SEC subpoena; isn't
25 that correct, sir?

H3ndwal2

Davis - cross

1 A. I think we got in a dispute because he felt like I had a
2 conflict of interest and I felt like I did not have a conflict
3 of interest. It was not a dispute over the legal fees --

4 Q. And --

5 A. -- as I recall.

6 Q. Well, in the middle of that dispute, didn't you call a
7 mutual friend and ask him -- Chuck Wilson, and ask him to
8 intervene, and you told them that if Bob doesn't stop, you're
9 going to get him in big trouble because he violated the terms
10 of a federal subpoena that required confidentiality with regard
11 to the SEC investigation and you're going to report him for
12 committing crimes for talking about that; didn't you do that,
13 sir?

14 A. I don't recall that conversation, no.

15 Q. Let me show you what's been marked for identification as
16 4510. I'd ask you to read that to yourself, sir.

17 (Pause)

18 A. Yes, I wrote this. I recall this.

19 Q. Right. You said you didn't want to -- do you recall, sir,
20 you said you didn't want to get Bob Utley in trouble but you
21 could and you would because he violated the terms of a federal
22 subpoena by talking about it; isn't that true, sir?

23 A. You got the wrong person here. I was referring to Brian
24 Utley, not Bob Utley.

25 Q. Brian Utley, isn't that true, sir?

H3ndwal2

Davis - cross

1 A. Yes.

2 Q. Brian is the son and Bob is the father?

3 A. Yes, that's correct.

4 Q. And that's what you said; isn't that right, sir?

5 A. This is an accurate email.

6 Q. And that was a lie, right? There is no law against
7 violating when it is referring to an SEC subpoena, you couldn't
8 get into trouble; you made that up?

9 MS. CUCINELLA: Objection.

10 THE COURT: It is a question. Overruled.

11 A. I'm sorry.

12 Q. You made that up. That wasn't true. Somebody can't get in
13 trouble. There is no --

14 A. I don't recall. I don't recall the facts at this point in
15 time, but I certainly wrote this email. I'm not denying that.

16 Q. And you made a false accusation so he would drop the
17 dispute you had to get a benefit for yourself, correct?

18 A. What was the benefit here?

19 Q. Let's take it a step at a time.

20 You made a false accusation, correct, sir?

21 A. I don't recall whether this is a false accusation or not.
22 What I was referring to was I was objecting to the way that
23 Brian Utley handled this particular situation.

24 Q. Right. And you were threatening him, through a mutual
25 friend to get a message to him, that you can him into big

H3ndwal2

Davis - cross

1 trouble because he did something you said was unlawful; and
2 that was a lie, you made that up, isn't that true, sir?

3 A. I don't know whether this was a lie or not. I had no clue.

4 Q. Bucky Lyons, sir, you said he was a friend of yours,
5 correct?

6 A. Yes. He is a business partner.

7 Q. You recall you got into a dispute with Bucky Lyons because
8 you testified you weren't paying for the airplane that you
9 shared with him and one other; do you recall that, sir?

10 A. Yes, that's accurate.

11 Q. And you recall that you also were in business with him; you
12 were investors in a fund together, correct?

13 A. We were co-general partners of a fund, yes.

14 Q. And he took some money that was in the fund and applied it
15 to your expenses, and you objected to that, isn't that right,
16 sir?

17 A. He misappropriated my share of the management fees for a
18 full year, and I objected to that.

19 Q. Sir, you owed him money, Falcons, for your partnership in
20 the airplane? My question is, did you owe him that money? Did
21 you owe him that money, sir?

22 MS. CUCINELLA: Objection.

23 THE COURT: Stop, Mr. Berke. Withdraw and put a fresh
24 question. You can't ask a question and then amend the
25 question, have the two questions hanging out in the air.

H3ndwal2

Davis - cross

1 MR. BERKE: Fair enough, your Honor. I will withdraw
2 and rephrase.

3 MS. CUCINELLA: Can we have a sidebar, your Honor?

4 THE COURT: No.

5 BY MR. BERKE:

6 Q. You owed Mr. Lyons money for the airplane, didn't you, sir?

7 A. No, I didn't.

8 Q. You owed the partnership, Falcons Nest, money, didn't you,
9 sir?

10 A. No, I did not.

11 Q. Your belief is you did not owe them money?

12 A. Absolutely, and that was the issue in dispute.

13 Q. Didn't you testify, sir, on direct that you had fallen way
14 behind in your payments on your airplane?

15 A. At an earlier period, yes, I had.

16 Q. And it is your testimony today, sir, that in 2014 you were
17 all paid up and you didn't owe any money; is that your
18 testimony?

19 A. I recall when we decided to sell the airplane, and I exited
20 the partnership. I did not owe the partnership any more money.

21 Q. So your testimony is that January 2014, you did not owe any
22 money to the partnership?

23 A. I don't recall exactly when we terminated the partnership.
24 But what I'm testifying to today is that when we terminated the
25 partnership and I exited the partnership, I paid my share of

H3ndwal2

Davis - cross

1 the liabilities, as I understood them, and I did not owe the
2 partnership any more money.

3 Q. Isn't it a fact, sir, that you threatened to have Bucky
4 Lyons prosecuted by the district attorney for committing a
5 crime; isn't that true, sir, based on --

6 A. I'm sorry. I didn't hear the question.

7 Q. Didn't you threaten to have Bucky Lyons prosecuted for what
8 you said was a crime as part of this business dispute; isn't
9 that true, sir, in 2014?

10 A. I had breakfast with Bucky Lyons' father, and I told his
11 father that Bucky had misappropriated approximately \$7,000 of
12 management fees from me over the course of a year. And I told
13 his father that if Bucky did not return the money to me, I was
14 going to have him -- I was going to seek recourse through the
15 District Attorney's office. I did say that. And I got a check
16 the next week for \$70,000.

17 Q. I bet you did.

18 A. I did.

19 Q. You also threatened to go to his wife's --

20 THE COURT: Well, wait. Mr. Berke, "I bet you did" is
21 not a question. Reframe.

22 MR. BERKE: I apologize. Absolutely.

23 Q. Sir, you also -- before he gave you that check, Mr. Lyons
24 was in the middle of a divorce, correct?

25 A. I don't recall when his divorce occurred.

H3ndwal2

Davis - cross

1 Q. You recall, sir, that you threatened to go to his wife's
2 divorce counsel and give him the renditions of facts and hire a
3 litigator from that same law firm to bring a case against him
4 and to also make a filing with the SEC and the Texas State
5 Securities Commission if he didn't give the money back; do you
6 recall that, sir?

7 MS. CUCINELLA: Objection. There are four questions
8 in there.

9 THE COURT: Rephrase your question.

10 Q. Do you recall, sir, telling him you were going to go to his
11 wife's divorce lawyer's firm and hire them to sue him; do you
12 recall that, sir?

13 A. I think in the same breakfast meeting that I just referred
14 to, I told his father that, yes.

15 Q. Did you tell him you were going to refer him to the
16 Securities and Exchange Commission and make accusations to the
17 Securities and Exchange Commission?

18 A. Yes, I think I did that as well.

19 Q. Did you tell him you were going to refer hem to the Texas
20 State Securities Commission as well?

21 A. I think I said that, yes.

22 Q. Sir, would you lie to get a benefit for yourself?

23 A. I hope I would not, no.

24 Q. I'm not asking you, sir, what you hope. I'm asking you if
25 you would.

H3ndwal2

Davis - cross

1 THE COURT: I think the witness has answered it.

2 Q. Sir, do you recall you testified on direct that after you
3 had misappropriated a hundred thousand dollars from Shelter
4 Golf, that you simply waited until -- a period of time until
5 you put money back, and then you just paid it all to the
6 shelter, to the Genesis Shelter for Battered Women; is that
7 your testimony on direct, sir?

8 A. I'm not following the question.

9 Q. Didn't you testify, sir -- do you recall the testimony,
10 sir, where you said that you owed money to a casino and you
11 misappropriated money that was intended for the shelter; do you
12 recall that, sir?

13 A. Yes, that's accurate.

14 Q. And you also testified that what you did is you waited 90
15 days and then you just gave all the money from the golf
16 tournament to Genesis Shelter; do you recall that testimony,
17 sir?

18 A. I don't think that's totally accurate. I paid -- I made
19 two payments to the charity that year.

20 Q. Yep. And you recall, sir, you made one payment -- do you
21 recall that the charity reached out to you and said, gee, they
22 were waiting on that money and they really needed it?

23 A. Yes, I do recall that.

24 Q. You recall, sir, you told them that you were going to pay
25 them money but you were holding some money back for accounting

H3ndwal2

Davis - cross

1 and marketing expenses; do you recall that, sir?

2 A. Yes, I think that's accurate.

3 Q. And you were holding money back because you had
4 misappropriated it, correct?

5 A. In reality, that's correct, yes.

6 Q. And you also told them -- ultimately you told them that you
7 decided to invest their money a little bit, that was the delay;
8 do you recall telling them that, too, the women's shelter?

9 A. I think that is accurate, yes.

10 Q. Those were all lies so they wouldn't discover your
11 misappropriation, correct?

12 A. That is totally accurate, yes.

13 Q. You lied to benefit yourself, correct?

14 A. I lied because I was trying to conceal this at the time
15 being, yes.

16 Q. Sir, going back to Bucky Lyons. The company you had
17 together was CSSF, correct?

18 A. Yes.

19 Q. And then he had another business called EBL, correct?

20 A. Yes. As far as I know, yes.

21 Q. Did your wife at the time, Terie Davis, ever work for EBL?

22 A. I don't recall that.

23 Q. Do you recall, sir, that you came up with a scheme to
24 pretend that Terie worked for EBL, you would pay a salary for
25 her, so that you could defraud an insurance company? Do you

H3ndwal2

Davis - cross

1 recall that, sir?

2 A. No. I have no idea what you're talking about.

3 Q. Let me show you some documents.

4 I am going to show you what's been marked for
5 identification as 4329. If we can go to the first email which
6 would be on the bottom. Right there. Thank you.

7 I'm sorry. The next one.

8 We can go lower than that, please.

9 There we go.

10 Now go to the next one.

11 So, first I would ask you to review this.

12 THE COURT: "This" being what, sir?

13 MR. BERKE: I'm sorry. Document 4329, for
14 identification. I'm sorry, Defense Exhibit 4329, for
15 identification. Thank you, Judge.

16 THE COURT: But what he has up on the screen is --

17 MR. BERKE: Oh, it is an email dated --

18 THE COURT: One line from it.

19 MR. BERKE: Yes. Email dated September 27, 2012,
20 8:11 a.m.

21 Q. I would ask you to read it to yourself, sir.

22 A. I've read it.

23 Q. Do you recall, sir, that you were trying to come up with a
24 plan to get insurance coverage for your wife after your
25 business, CSSF, went out of business? Do you recall that, sir?

H3ndwal2

Davis - cross

1 A. I don't recall the circumstances, no, but I can read the
2 email.

3 Q. Let me show you what's been marked as DX4400. If we can go
4 to the email at 9:52 a.m.

5 Do you recall, sir, that you asked -- read it to
6 yourself, sir, and I am talking about 4400, an email at
7 9:52 a.m. And do you recall, sir, you asked what is the
8 minimal amount of time that Terie needs to be employed by the
9 company in order to get insurance? Do you recall that, sir?

10 A. Yes, I do recall that.

11 Q. Then let's go up higher. Let's go to the answer.

12 And do you recall, sir, that she needed to be working
13 30 hours a week to meet to qualify? Do you recall that, sir?

14 A. Yes, that's Christine's response, yes.

15 Q. And do you recall, sir, that you were told that -- if you
16 will now go to -- I can show you what has been marked for
17 identification as Defense Exhibit 4398 and 4399.

18 If we can put that up there.

19 OK. I ask you to look at first 4398. I ask you to
20 read that email.

21 Then I would ask you to look at 4399.

22 Sir, you need to look at 4398 again to compare them.

23 Does that refresh your memory, sir, that you paid this
24 firm \$1,408 in order to replicate what approximately 30 hours
25 would have been if Terie was working for the company?

H3ndwal2

Davis - cross

1 A. Yes. I recall this, yes.

2 Q. So this refreshes your memory, sir, that you came upon --
3 that you were involved in a scheme to defraud an insurance
4 company by pretending that Terie Davis was an employee of a
5 company that she never worked one minute for; isn't that true,
6 sir?

7 A. I don't know that I was trying to defraud anybody. I
8 clearly recall doing this, and Bucky suggested we do this. And
9 his assistant, who handled the health insurance coverage,
10 basically managed the situation. I don't think I was
11 defrauding anybody, but I certainly recall doing this. This is
12 accurate.

13 Q. Let's talk about it. Let's break it down.

14 You agree, sir, Terie Davis did not work for EBL,
15 correct?

16 A. I agree with that, yes.

17 Q. You agree, sir, that you created a false record that she
18 did by paying money to EBL for what would have been a one-week
19 salary for 30 hours and having EBL pay that money to Terie,
20 correct?

21 A. I agree that Christine asked me in an email to send her a
22 check for \$1,408. Yes, I agree to that.

23 Q. So you are saying it is Christine's fault, Mr. Davis?

24 A. I'm not pointing fingers at anybody. I'm just reading what
25 the email says.

H3ndwal2

Davis - cross

1 Q. I am asking what you did, sir. You wrote that check to
2 Christine?

3 A. Yes. Yes, I did. Of course.

4 Q. And you knew it was to create a false record that Terie was
5 an employee at this company, correct?

6 A. I guess I didn't realize it was a false record, but, yes, I
7 did that.

8 Q. Sir, you knew it was a false record because you knew that
9 that was supposed to be a salary and Terie wasn't working for
10 EBL; isn't that a fact, sir?

11 A. I guess that's correct.

12 Q. And you knew you were creating a false record so they could
13 make a false application to an insurance company for Terie to
14 be covered; isn't that true, sir?

15 A. I guess that's correct.

16 Q. And you did that, sir, because you didn't want to go out
17 and buy your own insurance policy, so you defrauded this
18 insurance policy by pretending she was an employee when she
19 wasn't; isn't that true, sir?

20 A. I could certainly go by my own insurance policy at this
21 point in time. I'm not really sure why this coverage was
22 necessary. I don't recall the background as far as my wife and
23 her health was concerned. I just don't remember the facts.

24 Q. That's not my question, sir.

25 You remember enough facts to know you defrauded the

H3ndwal2

Davis - cross

1 insurance company, correct, sir?

2 A. Counselor, I'm not going to admit to defrauding anything
3 here. I know I paid an amount of money in order to have it
4 appear as if Terie was an employee, yes.

5 Q. That was not true, correct?

6 A. That was not true.

7 Q. So statements were going to be made on Terie's behalf by
8 you through this company to the insurance company that were
9 false, correct?

10 A. Could you repeat the question?

11 Q. Yes. You knew that, because you created this paperwork,
12 false statements were being made to the insurance company,
13 correct?

14 A. I really didn't report to the insurance company. I'm not
15 the one who made the report to the insurance company. So that
16 was not my responsibility.

17 Q. Well, Mr. Davis, you knew the whole reason you were writing
18 these checks and creating this paperwork was so that the
19 company could submit it to the insurance company to falsely
20 claim that Terie was an employee and would be covered, isn't
21 that true?

22 A. Counselor, I didn't submit the claim to the insurance
23 company. That's what I'm telling you.

24 THE COURT: Did you hear the question that was asked
25 of you, sir?

H3ndwal2

Davis - cross

1 THE WITNESS: Could you repeat the question, please?

2 THE COURT: I'll have the reporter read back the
3 question, please.

4 Vinny, if you don't mind.

5 (Question read)

6 A. Yes. I think that's accurate.

7 THE COURT: OK.

8 Q. You lied --

9 THE COURT: Go ahead, Mr. Berke.

10 MR. BERKE: Thank you, Judge.

11 Q. You lied to get a benefit for yourself, didn't you, sir?

12 A. Yes. It appears I was dishonest about this. It does
13 appear that way, yes.

14 THE COURT: All right. Let's take our mid-morning
15 break.

16 Ladies and gentlemen, do not discuss the case among
17 yourselves or with anyone. We'll be back in action in ten
18 minutes.

19 (Continued on next page)

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H3ndwal2

Davis - cross

1 (Jury not present)

2 THE COURT: See you in ten minutes.

3 MR. BERKE: Thank you, Judge.

4 MS. CUCINELLA: Your Honor, may we speak to you when
5 you come back?

6 THE COURT: Well, you can speak to me now.

7 MS. CUCINELLA: Mr. Ferrara is going to raise an
8 issue.

9 MR. FERRARA: Your Honor, Ms. Cucinella had asked for
10 a sidebar at one point, and we just wanted to explain for the
11 Court, as we had objections before, why we are making those
12 objections to some of these questions. There are two reasons
13 and they are both under Rule 609.

14 First, Mr. Berke is of course entitled to inquire into
15 specific instances of conduct to the extent they go to the
16 witness' character for truthfulness. And, for instance, this
17 last one about the defrauding the insurance company certainly
18 fits. Other things about a potential dispute with business
19 partners seems to fall far afield of that and would be
20 improper. He cannot simply inquire about some specific
21 instance of conduct unless, under Rule 609, it goes to
22 character or truthfulness.

23 Secondly --

24 THE COURT: How about the interaction with I think it
25 was Bucky Lyons, the elder, that if the son didn't repay monies

H3ndwal2

Davis - cross

1 that were taken, that he would take certain actions with the
2 prosecutor or a governmental authority; do you have problems
3 with that?

4 MR. FERRARA: Yes, potentially, your Honor. That's
5 water under the bridge, we understand. But, in other words,
6 moving forward, yes, we might, because it is not necessarily --
7 Mr. Berke wants to suggest that there was something improper
8 about it, but in fact having a dispute with someone and
9 exercising your rights to get to the bottom of it, or get
10 what's yours is not a specific instance -- doesn't go to his
11 character for truthfulness.

12 THE COURT: I think where Mr. Berke was headed, and
13 maybe his questions misfired, I don't know -- that's going to
14 be for the jury to decide whether they landed or they
15 misfired -- I thought him to be pursuing the line that a false
16 and baseless accusation was being made against the individual,
17 that the individual had been threatened with exposure for
18 revealing the terms of a federal subpoena as if that were some
19 kind of a crime. So, why is that an improper line of inquiry?

20 MR. FERRARA: I think that -- I think that may have
21 been a different line of questioning. I'm not suggesting, your
22 Honor -- again, I'm not moving to strike any of that. I'm
23 simply --

24 THE COURT: This is prophylactic for the next topic?

25 MR. FERRARA: Yes, so we don't have to have a sidebar,

H3ndwal2

Davis - cross

1 so your Honor understands why we are making some of these
2 objections.

3 THE COURT: The problem, Mr. Ferrara, is there is a
4 certain amount of latitude I have to give Mr. Berke. I would
5 have headed that one-off at the pass, but there was a kernel of
6 appropriate cross-examination there, so sometimes you have to
7 hear it in order to know what it is appropriate.

8 MR. FERRARA: Completely understood. Again, your
9 Honor, we just don't want to have a speaking objection in court
10 when we are making a 609 objection.

11 The other part of the objection, your Honor, which I
12 think is actually more unfairly prejudicial, is 609 excludes
13 extrinsic evidence of these specific instances of conduct. But
14 by reading in -- sorry, 608. Pardon me. Am I saying 609? I
15 mean 608, and I apologize. 608 excludes extrinsic evidence of
16 these specific instances of conduct. So when Mr. Berke or the
17 witness is reading off of these documents that are not in
18 evidence and cannot come into evidence, that is prejudicial.
19 It is improper. It is a back door to getting in essentially
20 this extrinsic evidence.

21 THE COURT: Whoa. No. If it's for the purpose of
22 refreshing a witness' recollection, how is it improper?

23 MR. FERRARA: No, not at all. Absolutely fine to put
24 it on the screen and ask if it refreshes. But Mr. Berke is
25 reading from it, and the witness is saying things like I see it

H3ndwal2

Davis - cross

1 in the document. So, number one, we would like Mr. Berke to
2 stop reading from it, because it is back-dooring in the
3 evidence, and we might move to strike when the witness is
4 reading from it as well because we think it's inappropriate.

5 THE COURT: Yes. I mean, I've tried repeatedly with
6 the witness to explain to him the concept of refreshing one's
7 recollection. That seems to be a concept that he has resisted.
8 And he's been asked whether something refreshes his
9 recollection. I think he understands what that means, and he's
10 volunteered: Well, I see what it says on the page.

11 MR. FERRARA: And we don't fault --

12 THE COURT: Stand up and move to strike it.

13 MR. FERRARA: Understood. And we just want the Court
14 to understand the basis for that. OK.

15 THE COURT: Yes. But stand up and move to strike it,
16 then.

17 MR. FERRARA: Understood, your Honor.

18 MR. BERKE: Your Honor, we have probably one more
19 instance of it and then no more. I don't think we are in 608
20 land because I specifically asked the witness whether he would
21 lie to get a benefit for himself, which is obviously the
22 critical issue in the case, and he said he wouldn't lie to get
23 a benefit for himself. I am impeaching the critical question
24 in this case, and that is how I've always done it. And I
25 believe that takes us out of 608. I don't think I have

H3ndwal2

Davis - cross

1 introduced any documents and I don't intend to on that issue,
2 but I do think that covers the bases.

3 THE COURT: Thank you, Mr. Berke.

4 MR. BERKE: Thank you, Judge.

5 THE COURT: OK. We are in recess.

6 (Recess)

H3N3WAL3

Davis - cross

1 (In open court; jury present)

2 THE COURT: Mr. Berke, you may continue.

3 MR. BERKE: Thank you, your Honor.

4 BY MR. BERKE:

5 Q. Mr. Davis, in your well over two dozen meetings with the
6 prosecutors in this case, did you ever tell them that you
7 committed insurance fraud?

8 A. I wasn't aware I committed insurance fraud, no.

9 Q. You knew you did the things we just covered before lunch,
10 correct?

11 A. Yes, I think we've been through that.

12 Q. Did you ever tell the prosecutors you did that?

13 A. I did not, no, I didn't recall it at all.

14 Q. Sir, you'll agree with me that insurance fraud is a crime,
15 correct, sir? You know that?

16 A. I'm not aware that I committed insurance fraud. So, I know
17 insurance fraud is a crime, yes.

18 Q. Is it your position, sir, that you believe submitting false
19 information to an insurance company in order to get a person
20 covered for insurance who is not otherwise entitled is not
21 insurance fraud?

22 A. Counselor, I did not submit the information to the
23 insurance company. Another employer did. So, I don't recall
24 the circumstances surrounding why we did it this way. But I
25 did not submit the claim to the insurance company. Another

H3N3WAL3

Davis - cross

1 company did that. Not me.

2 Q. Sir, you created the false records, sir, by writing checks
3 that were phony, correct?

4 A. I did precisely what I was told to do by the woman who
5 handled our insurance.

6 Q. So it's the woman who handled the insurance for the
7 company, it's her fault that you submitted false information
8 and pretended that Terie was an employee when she wasn't? It's
9 her fault?

10 A. I'm merely testifying that I did what she suggested I do.

11 Q. So it's your testimony that she committed insurance fraud
12 but you didn't?

13 A. I'm not sure who committed insurance fraud, if at all.

14 Q. You're not changing your testimony that you knew false
15 information was submitted, are you, sir?

16 A. I'm not changing my testimony about what I did, no.

17 Q. Sir, are you reluctant to admit that this is a crime
18 because you know it is a violation of your cooperation
19 agreement?

20 MS. CUCINELLA: Objection. I think he's testified he
21 doesn't know whether it insurance fraud.

22 THE COURT: Overruled. The question stands.

23 A. I'm sorry? The question again? I'm sorry.

24 Q. Is the reason, sir, that you're not admitting that making
25 false statements to an insurance company to get insurance

H3N3WAL3

Davis - cross

1 proceeds you're not entitled to is a crime because you know it
2 is a violation of your cooperation agreement, GX 1750?

3 A. I think the -- the actions that you've described took place
4 before I signed the cooperation agreement.

5 Q. Sir, do you recall that your cooperation agreement required
6 you to bring to the U.S. attorney's office's attention all
7 prior crimes you committed? Do you recall that, sir?

8 A. Yes, I think that's accurate.

9 Q. So I ask you again, sir, is the reason you refused to admit
10 that making false statements you know were being submitted to
11 an insurance company so you could get proceeds you're not
12 entitled to is a crime, is because you know it violates your
13 cooperation agreement?

14 A. I was not aware that I violated my cooperation agreement,
15 no.

16 Q. Sir, let me put on what's in evidence as Government Exhibit
17 1750. GX 1750.

18 Sir, that's your cooperation agreement, correct?

19 A. Yes.

20 Q. Dated May 11, 2016, correct?

21 A. Yes.

22 Q. I'd like to direct your attention to page three, paragraph
23 two. Make the whole paragraph a little bigger. You see where
24 it says, sir, "It is understood that Davis." Let's highlight

25 G. I'm sorry. Not G, let's highlight E. And F. It's really

H3N3WAL3

Davis - cross

1 F. Thank you.

2 So do you recall, sir, it says "It's understood that
3 Davis shall bring to this office's attention all crimes which
4 he has committed and all administrative, civil, or criminal
5 proceedings"? You see that, sir?

6 THE COURT: Why don't you finish the rest of the
7 sentence.

8 MR. BERKE: Of course, sir.

9 Q. And "(g) shall commit no further crimes whatsoever."

10 THE COURT: No, I mean finish the phrase that you
11 started to quote, which is F.

12 MR. BERKE: Of course.

13 Q. "It is understood that Davis (f) shall bring to the
14 office's attention all crimes which he has committed and all
15 administrative, civil or criminal proceedings, investigations
16 or prosecutions in which he has been or is" --

17 THE COURT: Slow down.

18 MR. BERKE: I'm sorry.

19 Q. "Has been or is a subject, target, party or witness."

20 MR. BERKE: Thank you, your Honor.

21 Q. You see that, sir?

22 A. Yes.

23 Q. So you were obligated to tell these prosecutors about any
24 crimes you committed, correct?

25 A. Yes.

H3N3WAL3

Davis - cross

1 Q. You violated that agreement by not telling them about the
2 insurance fraud, correct, sir?

3 A. Counselor, I'm not aware that I committed insurance fraud.
4 If I was aware of it, I certainly would have disclosed it.

5 Q. Sir, do you recall in January of 2014, you requested
6 permission from the CEO of Dean Foods, Gregg Tanner, to use the
7 Dean Foods airplane?

8 A. Yes, I recall that.

9 Q. Do you recall you said you wanted to use the airplane to go
10 to Las Vegas?

11 A. Yes, I recall that.

12 Q. Do you recall you told Gregg Tanner that you were using the
13 airplane to take a Dean Food customer on the trip?

14 A. Yes, I recall that.

15 Q. That wasn't true, was it, sir?

16 A. No. That is true.

17 Q. Sir, on this trip, didn't you -- you testified on direct
18 that you had four buddies who you always went to Vegas with,
19 correct?

20 A. On which trip?

21 Q. You regularly went to Vegas with people who you called "the
22 Dallas 4." Isn't that true, sir?

23 A. Yes.

24 Q. Joe Palladino was one, correct?

25 A. Yes.

H3N3WAL3

Davis - cross

1 Q. Dennis Fallon another?

2 A. Yes.

3 Q. Brian Rawson?

4 A. Yes.

5 Q. And you?

6 A. Yes.

7 Q. In fact, the prior year, 2013, you wrote that the Dallas 4
8 is coming to Vegas for a bachelor party of sorts. Isn't that
9 true, sir?

10 A. A what?

11 Q. A bachelor party of sorts.

12 A. I don't recall that.

13 Q. Let me show you what's been marked for identification as DX
14 4683.

15 My question to you, sir, does that refresh your memory
16 in 2013, October, you told somebody at a casino or you told
17 someone that the Dallas 4 is coming to Vegas for a bachelor
18 party of sorts?

19 A. Yes, I recall this now, yes.

20 Q. The Dallas 4 are the same buddies we're talking about,
21 correct?

22 A. Yes.

23 Q. When you asked the CEO of Dean Foods then Gregg Tanner for
24 permission to use the airplane to take a customer, that was to
25 take your gang of four and either their wives or girlfriends,

H3N3WAL3

Davis - cross

1 correct?

2 A. Yes, that's correct.

3 Q. Dennis Fallon, he worked as an employees benefit provider,
4 correct?

5 A. Yes, that's accurate, I think.

6 Q. Brian Rawson is an attorney, correct?

7 A. Yes.

8 Q. Joe Palladino owns a restaurant, correct?

9 A. He owns a restaurant business, rather extensive restaurant
10 business.

11 Q. So you're referring to Joe Palladino, your friend, that's
12 who is the customer of Dean Foods?

13 A. Yes.

14 Q. You didn't tell in e-mails you sent to Mr. Tanner you're
15 bringing your buddies, your Dallas 4 friends, you didn't tell
16 him that's who you're bringing, did you? Those are your
17 buddies who you're bringing to Vegas?

18 A. I told him the truth. I told him I'm taking a customer to
19 Vegas.

20 Q. When you told him a customer, Dean Foods, right?

21 A. Yes, that's accurate.

22 Q. Dean Foods is a \$10 billion company, correct?

23 A. Yes.

24 Q. Mr. Palladino owns a restaurant in Dallas?

25 A. I said he owns a restaurant business, it is a rather

H3N3WAL3

Davis - cross

1 extensive business. I think they own eight or 10 different
2 restaurants as I recall.

3 Q. They use milk in their coffee and milk in their drinks?

4 A. They were a customer of Dean Foods. They were a customer
5 of Morningstar, actually.

6 Q. Did you tell Mr. Tanner when asking for permission to use
7 the airplane that's what you meant when you said a customer of
8 Dean Foods?

9 A. I didn't say anything further than that, no.

10 Q. You agree with me, sir, it's misleading at best, it is a
11 lie at worst, wouldn't you, sir?

12 A. No. I wouldn't agree with that statement at all.

13 Q. So you took these people to further Dean Foods' business?
14 Is that your testimony?

15 A. I think what I said to Mr. Tanner is totally accurate.

16 Q. You're being as truthful about that as anything else in
17 your testimony today, sir?

18 MS. CUCINELLA: Objection.

19 THE COURT: Sustained.

20 Q. Sir, you admitted before we took a break that you lied in
21 the past to get a benefit for yourself, correct?

22 A. I have, yes. I think I did say that.

23 Q. Isn't it true, sir, that in early 2016, you desperately
24 needed a benefit?

25 A. I'm not sure what you are referring to specifically.

H3N3WAL3

Davis - cross

1 Q. Let's talk about it, sir. Part of your deal with the
2 prosecutors is you won't be prosecuted for any crimes related
3 to Shelter Golf, correct?

4 A. Yes, that's accurate.

5 Q. You testified about the \$100,000 you misappropriated. But
6 I want to ask you about the two \$25,000 checks you testified
7 about yesterday. Do you recall that, sir?

8 A. Yes, I do.

9 Q. Isn't it a fact, sir, that you lied to this jury in your
10 testimony yesterday?

11 A. I don't think I did, no.

12 Q. Sir, do you recall being asked this question and giving
13 this answer with regard to these two checks:

14 "Q. Tell the jury what happened." This is on page 809 of
15 yesterday's transcript.

16 "Tell the jury what happened.

17 "A. I forgot the date exactly, but it was in the spring,
18 typically I would spend a lot of money out of my own pocket to
19 fund expenses for the golf tournament prior to the golf
20 tournament, which was usually in April, late April or May. And
21 I think in April of this particular year, my assistant had been
22 out on sick leave, and I had not submitted my expenses to her
23 for repayment on a regular basis, and I asked her to transfer
24 25,000 into my account to reimburse me for expenses that I had
25 incurred.

H3N3WAL3

Davis - cross

1 "Q. What happened after that?

2 "A. About two or three weeks later, I also advanced myself
3 \$25,000, not knowing that my assistant had already put 25,000
4 in my account, so I double dipped so to speak."

5 Do you recall that testimony, sir?

6 A. Yes, I do.

7 Q. Then you were shown what's in evidence as Government
8 Exhibit 1704 and 1705 which are those two \$25,000 checks. Do
9 you recall that, sir?

10 A. Yes.

11 Q. I ask you again, sir, that was a lie, wasn't it, sir?

12 A. I don't think so. I think that was accurate, as I recall.

13 Q. Sir, let me show you what's been marked as Defense Exhibit
14 4102. Do you recall, sir, that in April of 2012, April Moffet,
15 your assistant, alerted you that you had a little over 8,000 in
16 your account, but you had to pay -- your mortgage was due and
17 it happened at a time that you were in St. Barts? Do you
18 recall that?

19 A. Yes.

20 Q. Do you recall, sir, that you got a credit card bill that
21 had to be paid? Do you recall that, sir?

22 MR. BERKE: That's it, I'm sorry. If you could just
23 go that same part again, Mr. McLeod. Thank you.

24 Q. Do you recall a MasterCard account that was due, MasterCard
25 bill?

H3N3WAL3

Davis - cross

1 A. I don't recall it specifically.

2 Q. Do you recall that Ms. Moffet offered to pay it herself,
3 your assistant?

4 A. Yes, she wrote that in this e-mail.

5 MS. CUCINELLA: Objection. Can we clarify whether the
6 witness has a recollection or whether he's reading from the
7 e-mail.

8 THE COURT: Mr. Davis, let me remind you of a point
9 that we've gone over before.

10 THE WITNESS: All right.

11 THE COURT: When you're shown a document, these
12 documents are not in evidence. You should read them to
13 yourself and ask yourself the question whether it refreshes
14 your recollection on a subject. It's not an appropriate answer
15 to say "I see what it says here." These documents are not in
16 evidence. No one has offered them in evidence. The reason
17 you're being shown them is so that you can review them and see
18 whether it refreshes your recollection on a subject. If it
19 refreshes your recollection having read it, then you should
20 testify as to what your refreshed recollection is.

21 Do you understand that?

22 THE WITNESS: Yes, sir, I do.

23 THE COURT: Okay. Mr. Berke, you understand that
24 you're not to read from documents not in evidence.

25 MR. BERKE: I do, your Honor.

H3N3WAL3

Davis - cross

1 THE COURT: Okay.

2 Q. So my question is, do you recall this, sir?

3 THE COURT: I don't understand what "this" means.

4 MR. BERKE: Fair enough.

5 Q. Let me ask you, sir, this is an e-mail dated April 16
6 between you and April Moffet.

7 THE COURT: Your question, Mr. Berke, should be I show
8 you a document which has been marked for identification as
9 whatever the identifier is. Please take a moment, sir, to
10 review it, and I ask you whether it refreshes your recollection
11 on the subject I asked about in my previous question.

12 MR. BERKE: Understood, your Honor.

13 THE COURT: That's proper questioning.

14 MR. BERKE: Understood. I'm going to offer it.

15 THE COURT: That's fine.

16 Q. You see this is an April 6 e-mail between you and April
17 Moffet, Defense Exhibit 4102?

18 A. Yes.

19 MR. BERKE: I would offer it.

20 THE COURT: Any objection?

21 MS. CUCINELLA: Yes, we object to it coming in.

22 MR. BERKE: If you look at the first e-mail it's about
23 Shelter Golf.

24 MS. CUCINELLA: Your Honor, the objection is under
25 Rule 608, it is extrinsic evidence that shouldn't come in.

H3N3WAL3

Davis - cross

1 MR. BERKE: Your Honor, Shelter Golf is part of the
2 deal in this case. It's not extrinsic at all.

3 THE COURT: Let me see you at sidebar.

4 (Continued on next page)

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H3N3WAL3

Davis - cross

1 (At the sidebar)

2 THE COURT: I didn't understand the last part of what
3 you said. It's part of the deal?

4 MR. BERKE: The cooperation agreement between
5 Mr. Davis and the prosecutors in this case gives him immunity
6 from Shelter Golf. We believe that he lied to the prosecution
7 and lied to this jury, and we want to be able to prove it about
8 a variety of things, and he committed all sorts of other crimes
9 related to Shelter Golf related to this deal, which goes
10 directly to the deal he made with the government.

11 MS. CUCINELLA: This e-mail is not inconsistent with
12 his testimony.

13 THE COURT: How is it inconsistent?

14 MR. BERKE: It will be. He said that she was gone and
15 she came back and she gave him a check to pay for expenses. In
16 fact his account was overdrawn. She gave him 25,000 in order
17 to pay it.

18 THE COURT: You have to slow down, Mr. Berke.

19 MR. BERKE: I do, your Honor.

20 We're going to be able to show that he made
21 misrepresentations, he created a false record, he stole another
22 \$25,000 check because he needed money, and this whole story he
23 told about accidentally reimbursing himself twice for expenses is
24 a lie, and we will be able to show it through documents.

25 MS. CUCINELLA: His bank account here was overdrawn

H3N3WAL3

Davis - cross

1 because of the expenses associated with Shelter Golf. There
2 may be other documents that they'll have that go to this, but
3 this doesn't.

4 MR. SCHOEMAN: Your Honor, I think the government is
5 seeing this the wrong way. This is not about inconsistent
6 statements. This is about crimes that the government's
7 cooperating witness committed, he's lying to the government
8 about them, and they've given him a deal that gives him
9 coverage for them. So we are not showing inconsistent
10 statements, we're showing his criminal activity that's part of
11 his deal with the government. The government elicited a
12 version of that on direct. We want to show that was not true.

13 THE COURT: Right. And you did elicit the Shelter
14 Golf story on direct.

15 MS. CUCINELLA: That's correct.

16 THE COURT: I'm going to allow the cross-examination
17 and the exhibit will be received.

18 MR. BERKE: Thank you, Judge.

19 (Continued on next page)
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23
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H3N3WAL3

Davis - cross

1 (In open court)

2 MR. BERKE: Your Honor, may I offer Defense Exhibit
3 4102.

4 THE COURT: Received.

5 (Defendant's Exhibit 4102 received in evidence)

6 MR. BERKE: May I publish it to the jury?

7 THE COURT: You may.

8 Q. Sir, do you see where on April 6, 2012, Ms. Moffet wrote to
9 you "I tried to call you but it didn't go through. I wanted to
10 bring you up to speed as to what is going on right now.
11 Yesterday you had a little over 8,000 in your account, but we
12 received an e-mail from Dean Foods notifying us of your direct
13 deposit of 26,250 that would have gone into your bank
14 yesterday. It did not. Your mortgage came out early this
15 morning leaving you with only 2,238 in your Northern. I have
16 put a call into Dean Foods and am waiting to hear back from
17 them. In the meantime, I plan on paying your MC out of my
18 savings account so that you're not stuck in St. Barts without
19 funds. On Monday when the Dean Foods funds are available, I
20 will cut myself a check out of your Northern to replenish our
21 savings again. Are you okay with that."

22 Do you see that, sir?

23 A. Yes.

24 MR. BERKE: If we can publish the response.

25 Q. "April. Just deposit 25,000 out of Shelter Golf until

H3N3WAL3

Davis - cross

1 Monday and we'll sort it out. Thanks. TD."

2 And the reference to Northern, that's your Northern
3 Bank account, right?

4 A. Yes, it is.

5 Q. You were in St. Barts on vacation, correct?

6 A. Yes, I was.

7 Q. You told her to take that money out, and just put it in
8 your account to cover your bills, correct? Is that correct,
9 sir, yes or no?

10 A. I told her to take it out of Shelter Golf and put it in my
11 account because, as I explained yesterday, I'd already incurred
12 close to \$20,000 of out-of-pocket expenses that I had not
13 submitted to her. I was aware of that, and that's why I meant
14 we'll sort it out. So yes, I did instruct her to do that.

15 Q. You didn't put that in that e-mail, did you, sir? You
16 didn't say it was for expenses. You just said put 25,000 in.

17 A. I didn't think I needed to.

18 Q. Just so we're clear, we're talking about -- can I show you
19 what's marked in evidence Government Exhibit 1704. That's the
20 check that Ms. Moffet deposited in your account at your
21 direction, correct, sir?

22 A. Yes, it is.

23 Q. You recall, sir, so, and you recall, sir, that there was a
24 second check in May of 25,000, correct, sir?

25 A. Yes.

H3N3WAL3

Davis - cross

1 Q. Let's put that, that's 1750, Government Exhibit 1705 in
2 evidence.

3 You said that that was to reimburse you for expenses,
4 and it was just a mistake that you were both giving checks to
5 reimburse, and you didn't realize it. It was just a simple
6 error.

7 Is that your testimony, sir?

8 A. I think what I said was I wasn't aware, I had no
9 confirmation that Ms. Moffet had put the first \$25,000 in my
10 account. So, I wrote myself a check for \$25,000, and
11 discovered afterwards that we double dipped; yes, I think
12 that's what I testified to.

13 Q. That was a lie, sir, because you knew in April she
14 deposited 25, because you told her to so your account wouldn't
15 be overdrawn?

16 A. Counselor, I just said I wasn't aware that she did it. We
17 never discussed it further between April 6 and May 14.

18 Q. April Moffet, your assistant for a long time, correct?

19 A. Yes.

20 Q. And your testimony -- and Northern Bank account, that's
21 your personal -- that's your primary personal bank account,
22 right?

23 A. Yes, it was.

24 Q. So is it your testimony before the jury today that you told
25 April Moffet to deposit 25,000, she did, you got 25,000 extra

H3N3WAL3

Davis - cross

1 dollars in your bank account so it won't be overdrawn, and your
2 testimony is that the following month you didn't know she
3 actually did? Is that your testimony, sir?

4 A. Yes, we did not sort it out. Yes. That is my testimony.

5 Q. Sir, isn't it a fact this second 25,000, the reason you
6 deposited, because you had an extra Shelter Golf check on your
7 person and you needed money, so you made a check out to
8 yourself? Isn't that true, sir?

9 A. I don't recall the circumstances, but I think I've
10 described this adequately.

11 Q. My question, sir, is isn't it a fact you wrote the second
12 check because you had a Shelter Golf check in your pocket, you
13 needed money so you just made it out to yourself?

14 A. I think I've answered the question already.

15 Q. Is my statement true or false, sir?

16 A. I'm sorry?

17 Q. Is my statement true or false?

18 A. Repeat the question.

19 Q. You had an extra Shelter Golf check in your pocket. You
20 needed money. So you wrote a check to yourself.

21 A. I didn't have a Shelter Golf check in my pocket. No,
22 that's not accurate.

23 Q. Sir, let me ask you. Do you recall being interviewed by
24 the prosecutors and the FBI in this case in April of 2016 and
25 telling them exactly that, that you had a Shelter Golf check in

H3N3WAL3

Davis - cross

1 your pocket, you needed money, so you wrote it to yourself?

2 A. I don't recall that.

3 Q. Let me show you what's been marked for identification as
4 3501-15 and I'll first show you the date. See the date, sir?

5 A. Yes.

6 Q. Directing your attention to page seven, paragraph two. I
7 ask you to read that to yourself, sir.

8 My question to you, sir, does that refresh your
9 recollection on April 5, 2016, you told the FBI and the
10 prosecutors in this case that as to a check dated May 14, 2012,
11 in the amount of \$25,000, you had an extra check on your person
12 and needed money so you made the check out to yourself?

13 THE COURT: Do you understand the question? The
14 question is reading this document, does it refresh your
15 recollection on what you told the FBI on that given date.
16 That's the question that's before you, Mr. Davis. Do you
17 understand that?

18 THE WITNESS: Yes. Yes, sir. I do.

19 THE COURT: Okay. You may answer.

20 A. This does not refresh my recollection of what I told the
21 FBI.

22 MR. BERKE: Your Honor, I would offer as an exhibit
23 3501-15-A this sentence and the date into evidence.

24 THE COURT: Any objection?

25 MS. CUCINELLA: No objection.

H3N3WAL3

Davis - cross

1 THE COURT: Received.

2 (Defendant's Exhibit 3501-15-A received in evidence)

3 MR. BERKE: May I publish this and the date of the
4 interview and the statement.

5 THE COURT: You may.

6 MR. BERKE: Can we just put up that statement?

7 Q. Sir, you understand that in this document "CHS," that
8 refers to you, correct, sir?

9 A. I'm sorry?

10 Q. You understand this is referring to you, correct, sir?
11 Withdrawn.

12 If I could read it. "CHS reviewed a check for \$25,000
13 dated May 14, 2012. CHS had an extra check on CHS's person and
14 needed money. So CHS made a check out to CHS."

15 You see that, sir?

16 A. Yes, I have no idea what CHS means.

17 Q. You understood, sir, from looking at the first page it
18 reflected interviews of you in this document, correct, sir?

19 A. I just don't know what it stands for is all I'm saying.

20 Q. I know. But you know this refers to you, correct, sir?

21 A. Okay.

22 THE COURT: No. Do you know it refers to you?

23 THE WITNESS: I'm understanding that, yes. I'm sorry.

24 THE COURT: Next question.

25 Q. Sir, do you recall that the following year, October 2013,

H3N3WAL3

Davis - cross

1 you got really worried about this money you took, and you had
2 what you would characterize as an oh shit moment, if you excuse
3 the language. I'm going to get in a lot of trouble. Do you
4 recall that, sir?

5 A. At what point in time?

6 Q. October 2013.

7 A. Yes.

8 Q. You went about to try to create a phony record to hide your
9 theft of \$25,000, didn't you, sir?

10 A. I'm not aware I created a phony record.

11 Q. Let me show you what's been marked for identification as DX
12 4067. Do you recognize DX 4067 to be a series of e-mails
13 between you and April Moffet dated October 24, 2013?

14 A. Yes.

15 MR. BERKE: Your Honor, I'd offer Defense Exhibit
16 4067.

17 THE COURT: Any objection.

18 MS. CUCINELLA: Just one moment, your Honor. We just
19 got it.

20 THE COURT: Sure.

21 MS. CUCINELLA: No objection.

22 THE COURT: Received.

23 (Defendant's Exhibit 4067 received in evidence)

24 MR. BERKE: May I publish it, your Honor?

25 THE COURT: You may.

H3N3WAL3

Davis - cross

1 Q. Sir, would you read your e-mail to Ms. Moffet on
2 October 24, 2013 at 11:16.

3 A. It says "April, I'm sending you a check today for the
4 amount of money that I did not use for out-of-pocket expenses
5 in 2012 for Project Shelter. I finally reconciled what I spent
6 vis-a-vis the money out of Project Shelter funds. I sent an
7 e-mail to get our tax return finalized. I should have done
8 this sooner, but better late than never. TD."

9 Q. And her response is TD -- TD is how you commonly went by.
10 TD. That's how people called you?

11 A. Yes.

12 Q. "TD, okay, thank you, I will be on the look out for it."

13 You said you sent this following the oh shit moment
14 you had in October 2013, correct?

15 A. Yes, I think that's accurate.

16 Q. Isn't it a fact, sir, you sent this e-mail so there would
17 be a record, but you never gave a check or any money to pay
18 back what you stole?

19 A. What's the question? I'm sorry.

20 Q. Isn't it a fact, sir, that despite what you wrote in this
21 e-mail, you never sent any check to pay back what you stole?

22 A. No, I did not. At that point in time I did not send a
23 check to her.

24 Q. You never got -- you never sent it back until you got
25 caught when you testified before the SEC, and you had to give

H3N3WAL3

Davis - cross

1 an accounting. That's when you sent it back, because you were
2 going to get caught, correct?

3 A. Yes, that's accurate.

4 Q. Sir, I want to understand something. We're looking at
5 times in May and April of 2012, correct, that's what this
6 period is talking about when you took this money out of Shelter
7 Golf, correct?

8 A. Yes.

9 Q. Going into 2013, because you were scared about getting
10 caught, correct?

11 A. I realized what the problem was, yes.

12 Q. And it was your testimony over yesterday and the day before
13 that this was the same period when you had supposedly given all
14 this material non-public information in 2012 going forward to
15 Mr. Walters, where he made these big bets in Dean Foods and
16 made a ton of money based on what you said. Correct? That was
17 your testimony, correct?

18 A. Yes.

19 Q. And it's your testimony, sir, that all of that was true,
20 but instead of going to Mr. Walters and say, hey, Bill, you
21 know all those illegal tips I gave you and all those tens of
22 millions you made? How about giving me \$25,000 so I can pay my
23 bills.

24 Is that your testimony?

25 A. Can you stand closer to the microphone?

H3N3WAL3

Davis - cross

1 THE COURT: I don't understand the question.

2 MR. BERKE: I'll rephrase, your Honor.

3 Q. Is it your testimony, sir, that despite what you testified
4 on direct about what you claim you did in 2012 and 2013, you
5 stole this money from Shelter Golf, and did not simply go to
6 the person you claim was your alleged co-conspirator and ask
7 him for some of the profits he made from Dean Foods. Is that
8 your testimony, sir, yes or no, sir?

9 A. Yes.

10 Q. I want to go back, sir. Do you recall we talked about the
11 SEC testimony when you were asked questions about Shelter Golf
12 that you hadn't prepared for with your lawyer. Do you remember
13 that testimony earlier today, sir?

14 A. Yes.

15 Q. And do you recall, sir, they specifically asked you about
16 the \$100,000 advance. The \$100,000 that was paid to you,
17 correct?

18 A. Are you referring to the Shelter Golf money?

19 Q. I'm talking about the \$100,000 you misappropriated from
20 Shelter Golf.

21 A. Yes, they asked me about that, yes.

22 Q. You testified that was simply an advance against expenses,
23 correct?

24 A. I don't recall specifically what I said in the SEC
25 interview.

H3N3WAL3

Davis - cross

1 Q. Let me show you what's marked for identification as 3501-5.
2 Your May 18, 2015 SEC testimony. I'm going to show you page
3 150, line 18. Page 150 in the lower left.

4 MR. BERKE: If you can go a little above just to show
5 what that question was referring to. Now go to the bottom.

6 Q. Let me ask you this, sir. Multiple pages. You lied to the
7 SEC about the moneys you took out of Shelter Golf?

8 A. Yes, sir.

9 Q. Repeatedly?

10 A. Yes, I did. I think that's fair.

11 Q. Do you recall you were asked specifically about the 50,000,
12 too?

13 A. Yes.

14 Q. You recall you said that was an advance against expenses,
15 too, correct?

16 A. Yes, I think I did.

17 Q. And you said, do you recall testifying specifically that
18 you gave your assistant April Moffet an accounting that
19 supported how your expenses were 50,000, and why you were due
20 that money? Do you recall testifying to that, sir?

21 A. I think that's accurate, yes.

22 Q. That was a lie, of course?

23 A. Yes, it was.

24 Q. You recall, sir, that the SEC, after your testimony, asked
25 you specifically to give an accounting, not of anything of Dean

H3N3WAL3

Davis - cross

1 Foods, but an accounting of your Shelter Golf moneys? Do you
2 recall that?

3 A. Yes, I do.

4 Q. That was a big problem for you, right, sir?

5 A. I complied with it, however.

6 Q. It was a problem because you had taken money you hadn't
7 paid back, isn't that true, sir?

8 A. Yes, that's accurate totally.

9 Q. First you paid back the money, right?

10 A. Repeat the question? I'm sorry.

11 Q. So the first thing you did is you paid back the money you
12 had stolen, correct?

13 A. After the SEC interview, yes. I reimbursed Shelter Golf.

14 Q. And you had your lawyers submit a letter -- or withdrawn.

15 You authorized your lawyers to submit a letter on your
16 behalf explaining what happened with the moneys and providing
17 that accounting you were asked to give, correct?

18 A. I think they actually submitted two letters.

19 Q. Yes. They did. That was on your behalf that you
20 authorized, correct, sir?

21 A. Yes, I did.

22 Q. Let me show you the first one marked for identification
23 Defense Exhibit 2072.

24 MR. BERKE: If you can show the whole document for a
25 moment. And the next page.

H3N3WAL3

Davis - cross

1 Your Honor, I would like to offer a redacted version,
2 and I noticed there is one part that did not get redacted if I
3 could have a moment, your Honor, with Ms. Cucinella.

4 THE COURT: Yes.

5 MR. BERKE: Your Honor, we're going to offer a
6 redacted version of 2072, and we'll make sure it's redacted. I
7 believe in agreement with -- I have an agreement with
8 Ms. Cucinella about the redacted version.

9 THE COURT: Any objection to the exhibit as redacted?

10 MS. CUCINELLA: No objection.

11 THE COURT: Received.

12 (Defendant's Exhibit 2072 received in evidence)

13 MR. BERKE: Your Honor, may I just have one moment?

14 THE COURT: You may.

15 MR. BERKE: Your Honor, may I publish it?

16 THE COURT: You may.

17 Q. You see that this is the letter, if we go to the last page.
18 That was written by Natalie Arbaugh, that's a lawyer who worked
19 with Tom Melsheimer at the time, correct?

20 A. Yes.

21 Q. That's a letter submitted on your behalf with your
22 authorization, correct?

23 A. Yes.

24 Q. I would like to direct your attention to page two, the
25 paragraph beginning "Mr. Davis also had." See where it says

H3N3WAL3

Davis - cross

1 "Mr. Davis also had \$25,000 distributed to him on or about
2 April 6, 2012, from Shelter Golf with the intent of repaying
3 that money. While Mr. Davis believed this money was paid back,
4 Mr. Davis and his assistant Ms. Moffet reviewed the records and
5 independently determined the \$25,000 was inadvertently not
6 returned to Shelter Golf, although both thought it had been."
7 Then you said you paid it back.

8 That was a lie. That's not true, correct, sir?

9 A. Yes, I think that's accurate.

10 Q. It's accurate that it's a lie, correct?

11 A. Yes.

12 Q. You lied to your lawyers who wrote false statements on your
13 behalf to the SEC, correct, sir?

14 A. Yes, that's correct.

15 Q. Does that sound like your testimony from yesterday that
16 Ms. Moffet wrote you a check for expenses, and you didn't know
17 it, so you accidentally wrote another check for the same amount?

18 A. At the time the two checks were written, I think my
19 testimony is accurate, yes.

20 Q. If we can go back to the letter.

21 MR. BERKE: We can take down that section, Mr. McLeod.
22 Thank you. If you go to the bottom of the first page. We're
23 going to go over to the second page. And if we can highlight
24 the paragraph beginning one and the chart.

25 Q. You see, sir, it says that this letter that was submitted,

H3N3WAL3

Davis - cross

1 Defense Exhibit 2072, "Below is a chart explaining these
2 expenses with the supporting documentations. As you will see,
3 these expenses were paid for with his credit cards." Do you
4 see that, sir?

5 A. Yes.

6 Q. I'd like to begin on the second page about those expenses.
7 And you see the one for -- if we can highlight the one for
8 \$5,933. Where it says dinner for approximately 24 tournament
9 sponsors and/or participants.

10 Do you see that, sir?

11 A. Yes, I do.

12 Q. In fact, sir, that was a surprise birthday party that you
13 threw, correct, sir?

14 A. Yes, it was.

15 Q. You threw it for your wife at the time, correct, sir?

16 A. Yes, that's accurate.

17 Q. Had nothing to do with Shelter Golf?

18 A. While there were sponsors at the dinner party, that expense
19 was totally inappropriate.

20 Q. That was a party you threw for your wife, correct?

21 A. Yes, that's accurate.

22 Q. Nothing to do with Shelter Golf?

23 A. That's accurate.

24 Q. You see, sir, it also says Al Biernat dinner? Do you see
25 that, sir on the first page?

H3N3WAL3

Davis - cross

1 A. Yes.

2 Q. I'm sorry. It is on -- let me ask you first, sir. Do you
3 recall that you were asked in April '16 by the prosecutors if
4 you were ever take friends out and expense to Shelter Golf, and
5 you told them -- this is when you were trying to get your
6 deal -- not purposely.

7 Do you recall being asked that question and giving
8 that answer?

9 A. Could you repeat the question? I didn't hear the first
10 part.

11 Q. Do you recall during your meetings, prior to getting your
12 cooperation agreement, you were asked by the prosecution if you
13 would ever take friends out and expense to Shelter Golf, and
14 you said not purposefully.

15 A. I don't recall saying that, but it's possible.

16 Q. Let me show you what's been marked for identification as
17 3501-25. If we just show the top in terms of what it is --

18 THE COURT: This is not in evidence, is it?

19 MR. BERKE: No, I'm sorry. Should not be on there.
20 Sorry, your Honor. Thank you, Judge. Just for witness.

21 Q. See what it is, sir, and you see the date?

22 A. Yes.

23 Q. And I'd like to go to page 13, middle of the page. Does
24 that refresh your memory that on April 5, 2016, you were asked
25 by the FBI and by the prosecutors in a meeting with the

H3N3WAL3

Davis - cross

1 prosecutors and the FBI whether you ever purposely took out
2 friends or family for dinner entertainment and charge those
3 expenses to Shelter Golf? Do you recall that, sir?

4 A. Do I recall saying that?

5 Q. Do you recall being asked that question and saying "not
6 purposefully"?

7 A. I don't recall that during this interview.

8 MR. BERKE: Your Honor, I would offer again the date
9 and that sentence of Exhibit 3501-25 and call it 3501 -- I'm
10 sorry. 3501-15, and call it 3501-15-A.

11 THE COURT: Any objection?

12 MS. CUCINELLA: Yes, we object at this time. He's
13 take a fragment out of a much longer conversation and trying to
14 make it inconsistent with the testimony today. So I'm happy to
15 consult with him over the lunch break. But if this document
16 comes in, more of it needs to come in.

17 MR. BERKE: And I am, your Honor, I was intending to
18 do that. Why don't I do the second part and I'll put both in.

19 THE COURT: Go ahead.

20 Q. When you gave that answer -- when you were asked that
21 question, the prosecutors knew about the Nick and Sam dinner,
22 isn't that right?

23 A. Yes, absolutely.

24 Q. They confronted you with that, correct?

25 A. Yes.

H3N3WAL3

Davis - cross

1 Q. And to them you admitted that they were right, that it was
2 not appropriate, correct?

3 A. Yes.

4 Q. After they confronted you?

5 A. I admitted it before that as well.

6 Q. Let me show you on the same document, 3501-15, and if I
7 could show you page five, paragraph seven, lines two and three.

8 THE COURT: This is a different document than what you
9 showed him before, correct?

10 MR. BERKE: It is, your Honor, and I think -- yes.
11 This is 3501 -- 3501-15. Your Honor, what I'm going to do
12 is -- the same meeting, different documents. I am going to use
13 this one instead. I apologize.

14 THE COURT: What's the question?

15 Q. Sir, do you recall that, do you recall, sir, after you said
16 you did not purposefully take out friends or family and charge
17 it to Shelter Golf, you were shown your credit card statement
18 for the Nick and Sam restaurant? Do you recall that, sir?

19 A. Yes.

20 Q. And then you admitted that you inappropriately expensed
21 that dinner to Shelter Golf, and that you also inappropriately
22 expensed a \$2,900 dinner at the Al Biernat restaurant, isn't
23 that true, sir?

24 A. Yes.

25 Q. Sir, did you admit all the other dinners and meals and

H3N3WAL3

Davis - cross

1 expenses that you falsely charged to Shelter Golf at that
2 meeting or any other meeting with the prosecutors?

3 A. I don't think I charged any other inappropriate charges to
4 the tournament.

5 Q. Okay.

6 THE COURT: All right. Ladies and gentlemen, we are
7 going to break for lunch. Please do not discuss the case among
8 yourselves or with anyone. We'll be back in action at
9 2 o'clock. Thanks a lot.

10 (Jury excused)

11 (Continued on next page)

H3N3WAL3

1 THE COURT: Have a pleasant lunch.

2 MR. CLARK: I represent the witness and I have an
3 application.

4 THE COURT: You can make your application. Please be
5 seated, everyone else.

6 MR. BERKE: Could I ask that the witness be excused?

7 MR. CLARK: That's fine with me.

8 THE COURT: Why don't you step out, Mr. Davis.

9 THE WITNESS: Thank you, sir.

10 (Witness not present)

11 THE COURT: State your appearance, sir, if you will.

12 MR. CLARK: Christopher Clark, Latham & Watkins, 885
13 Third Avenue, New York, New York for Mr. Davis.

14 Your Honor, I've been advised of your Honor's ruling
15 yesterday about non-contact with the witness during his
16 testimony, and we've abided by that.

17 Today there was cross-examination about whether the
18 witness had committed certain crimes and whether he violated
19 his cooperation agreement. I believe as his counsel he's going
20 to have questions about that for me. And I believe --

21 THE COURT: I believe -- stop. "I believe as his
22 counsel he's going to have questions for me about that."

23 MR. CLARK: Yes.

24 THE COURT: Is that what you said?

25 MR. CLARK: And I'd like to be able to advise him

H3N3WAL3

1 about any questions he has about that. I don't want to talk to
2 him about his testimony, I don't want to talk to him about how
3 he should testify later in the day. But if he wants to ask me
4 about the issues that he's been questioned about, I'd like to
5 be able to give him legal advice.

6 THE COURT: Well, I understand your point. But, if it
7 does not relate to the future course of his testimony, but
8 rather what are the consequences of the testimony that he's
9 given -- that's what I understand you to be saying, correct?

10 MR. CLARK: That's correct, your Honor.

11 THE COURT: Why doesn't that wait until he's off the
12 stand? Why can't that wait until he's off the stand? He might
13 like to know the answer right this minute. But, what is the
14 pressing need to have a dialogue with him while he's still
15 under examination?

16 MR. CLARK: It may well cause him to wrongfully answer
17 other questions about the consequences of his testimony. He
18 has a right to legal advice about the meaning of his
19 cooperation agreement and the meaning of his conduct, and
20 that's what I've been hired to do. He has not been sentenced,
21 your Honor.

22 THE COURT: All right. Mr. Berke?

23 MR. BERKE: Your Honor, I'm going to defer to my
24 co-counsel.

25 THE COURT: Mr. Schoeman.

H3N3WAL3

1 MR. SCHOEMAN: Your Honor, we object to that because I
2 think what Mr. Clark has said is he basically wants to tell the
3 witness how he should answer questions in the future.

4 THE COURT: I don't think he said quite that.

5 MR. SCHOEMAN: But the point is, if a witness is on
6 the stand on cross-examination, then during the entire
7 cross-examination, if it were, you know, able to be done in one
8 sitting, he would not have the opportunity at any point to talk
9 to anybody. Now because of the nature of this case, this
10 cross -- the direct examination and the cross-examination will
11 be lengthy, and as an accommodation to the human condition, we
12 have to take breaks and we have to go home and we have to come
13 back. But essentially, it's like he's on cross-examination
14 like any witness, and during the cross-examination, a witness
15 is not entitled to consult with somebody in a way that might
16 impact their testimony.

17 So we would ask that any of this consultation take
18 place after the cross-examination is completed.

19 THE COURT: All right. I'm going to allow the
20 consultation. And of course, I'm going to allow counsel to
21 bring out in the cross-examination that over the lunch break,
22 or whatever it turns out to be, you consulted with your
23 counsel. Not what did you consult with your counsel about, but
24 the fact that you consulted with your counsel. And that's my
25 ruling.

H3N3WAL3

1 MR. CLARK: Thank you, your Honor.

2 MR. BERKE: Just one question. Can I bring out that
3 he consulted about his cooperation agreement?

4 THE COURT: No.

5 MR. BERKE: Okay.

6 MR. CLARK: Your Honor, he may not have questions
7 about it. I just want to be available for him.

8 THE COURT: Right. Okay.

9 MR. CLARK: Thank you, your Honor. Appreciate it.

10 (Recess)

11 (Continued on next page)

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H3ndwal4

Davis - cross

A F T E R N O O N S E S S I O N

2:07 p.m.

(Jury not present)

THE COURT: Please be seated.

Bring our jurors in, so remain standing. I changed my
mind.

(Jury present)

THE COURT: Please be seated.

Welcome back, ladies and gentlemen. Hope you had a
pleasant lunch. We're back in action.

And Mr. Berke, you may continue.

MR. BERKE: Thank you, your Honor.

THOMAS C. DAVIS,

Resumed, and testified further as follows:

CROSS-EXAMINATION (Resumed)

BY MR. BERKE:

Q. Mr. Davis, do you recall there came a point in time when
you authorized your lawyers to provide more information to the
SEC to try to persuade them that the Nick & Sam dinner that was
a surprise party for your wife was actually for Shelter Golf;
do you recall that, sir?

A. I know that we submitted a second letter, yes.

Q. Do you recall, sir, that your lawyer told them that Mike
Rawlings was the keynote speaker at the event for players and
sponsors for Shelter Golf at that dinner? Do you recall that,

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Davis - cross

1 sir?

2 A. Who said that? I'm sorry. I didn't hear the first part of
3 the question.

4 Q. Your lawyer said that to the SEC.

5 A. I don't recall precisely what he said to the SEC.

6 Q. Let me show you a document marked Defense Exhibit 2046, for
7 identification. This is just for you.

8 Do you see what it is, sir?

9 A. Yes.

10 Q. I'm going to show you beginning on the bottom of this page
11 going up to the next page, a paragraph beginning "Third." I
12 would ask that you read that to yourself, sir.

13 (Pause)

14 A. Yes. I can see it.

15 Q. And does that refresh your memory that your lawyer, sir,
16 provided additional information to the SEC about that Nick &
17 Sam dinner?

18 A. Yes.

19 Q. Do you recall that they asked for a list of guests, and
20 your lawyer provided that and also told them that Mike Rawlings
21 was the keynote speaker at the dinner?

22 A. Yes.

23 Q. Mike Rawlings was the mayor of Dallas, correct?

24 A. Yes.

25 Q. He was a friend of yours as well, correct?

H3ndwal4

Davis - cross

1 A. Yes.

2 Q. Again, this was all a lie because this was not a Shelter
3 Golf event, so he wasn't a Shelter Golf keynote speaker, was
4 he?

5 A. Not at the dinner, no.

6 Q. And, sir, when you tell a lie, you really know how to
7 embellish it, correct?

8 A. I'm not sure I understand the question.

9 Q. When you tell a lie, sir, you really know how to embellish
10 that lie when you are telling it to try to sell it, don't you,
11 sir?

12 MS. CUCINELLA: Objection.

13 THE COURT: Sustained.

14 Q. Do you agree, sir, that this is an embellishment on your
15 earlier lie to the SEC about the Nick & Sam dinner, correct?

16 A. This is not accurate. That is what I will testify to.

17 Q. You have added details to try to persuade the SEC to accept
18 your initial lie, correct?

19 A. They asked for a list of attendees to the dinner, and I
20 think my attorneys provided that.

21 Q. Right. But then you added an extra touch to get them to
22 believe that, again, another lie, that Mike Rawlings was the
23 keynote speaker so that they would accept your initial lie; is
24 that fair, sir?

25 MS. CUCINELLA: Objection. The attorneys wrote the

H3ndwal4

Davis - cross

1 letter, not him.

2 THE COURT: Well, I am going to sustain it as to form
3 as argumentative.

4 Q. You understood, sir, that your lawyers wrote this because
5 you told them that Mike Rawlings was the keynote speaker at a
6 dinner for Shelter Golf, correct?

7 A. Yes.

8 Q. And you lied to your lawyers, correct?

9 A. Yes, I did.

10 Q. But there's also a kernel of truth in it in that Mike
11 Rawlings was a friend of yours, correct?

12 A. Yes.

13 Q. And he had been a keynote speaker at other events, correct?

14 A. Yes, he had.

15 Q. So what you did to construct your lie, you took something
16 that was a kernel of truth, you embellished it, and then tried
17 to sell your original lie; is that fair, sir?

18 MS. CUCINELLA: Objection.

19 THE COURT: Overruled.

20 A. Can you repeat the question? I'm sorry.

21 Q. Sure. So what you did, sir, in order to sell your original
22 lie that the Nick & Sam dinner was for Shelter Golf, you
23 embellished it by including something that had a kernel of
24 truth about Mike Rawlings being the keynote speaker?

25 A. Yes. I think I --

H3ndwal4

Davis - cross

1 Q. You did that in the hope that they wouldn't uncover your
2 initial lie, that this was a legitimate sponsor Shelter Golf
3 expense, correct?

4 A. Yes, I think that's accurate.

5 Q. And you recall, sir, you also told the SEC that -- in the
6 letter we talked about in evidence, 2072 -- that there was also
7 a dinner at Nobu for \$806 that was for Shelter Golf? Do you
8 recall that, sir?

9 A. I forgot the question. I'm sorry. Can you repeat it?

10 Q. Do you recall, sir, in your lawyer's letter that you
11 authorized to the SEC, you also claimed that there was a dinner
12 at Nobu that was a Shelter Golf expense?

13 A. I think it was included as an expense, yes.

14 Q. Let me show you -- if we could publish Defense Exhibit
15 2072, in evidence, page 2.

16 And there it is, sir. So that was a lie, too, isn't
17 it?

18 A. I'm trying to recall what that particular expense was for.

19 Q. And actually, if I can, there is another Nobu --

20 THE COURT: Stop. Stop. Stop. Mr. Berke, let the
21 witness finish his answer before you start talking again.

22 MR. BERKE: Your Honor, the only thing I was going to
23 say is it is the wrong Nobu dinner that is highlighted.

24 THE COURT: It doesn't matter. Let the witness finish
25 and then you can make your point.

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Davis - cross

1 MR. BERKE: Of course, your Honor.

2 THE COURT: If you make a mistake in the question, you
3 you're only human, but you don't talk over the other person.
4 You don't talk over me and you don't talk over the witness.

5 MR. BERKE: Fair enough, Judge.

6 Are you finished?

7 THE WITNESS: Your Honor, I'm sorry. I lost track of
8 where we are.

9 THE COURT: Put a new question.

10 BY MR. BERKE:

11 Q. So look at Defense Exhibit 2072, in evidence. Do you see
12 that, sir?

13 A. Yes.

14 Q. Do you see a May 14 dinner for Nobu? It says,
15 "Entertainment with tournament players."

16 A. Yes.

17 Q. That was a lie, too, sir, that was not a Shelter Golf
18 expense, was it, sir?

19 A. I'm struggling, counselor. I don't remember this
20 particular expense. But if it was removed by me at -- when we
21 filed the tax return, then it was clearly not a legitimate
22 expense.

23 Q. And, sir, is it possible that it is not a legitimate
24 expense and you didn't remove it from the tax returns?

25 A. I don't recall precisely what that expense item was for. I

H3ndwal4

Davis - cross

1 can recall having more than one dinner at Nobu entertaining
2 sponsors for players for the tournament.

3 Q. Do you see the date of that as May 14, 2012?

4 A. Yes.

5 Q. Let me show you what's marked for identification as Defense
6 Exhibit 5234.

7 Sir, do you see any amounts between you and Daniel
8 Strauss?

9 A. Yes.

10 Q. Mr. Strauss was working on a Park Cities deal, that you
11 testified about, with you, correct?

12 A. Yes. He was -- he is employed by a hedge fund in New York.

13 Q. OK. I am going to ask you to look down -- if we could go
14 to the end of this email chain. And you see the date of these
15 emails, May 14, 2012?

16 A. Yes.

17 Q. I will have you go to the end, please.

18 Excuse me. Go to the top.

19 Do you see, sir, made plans to go to dinner with Nobu
20 at Nobu with Daniel Strauss on May 14, 2012; do you see that,
21 sir?

22 A. Yes.

23 Q. That's what that Nobu dinner was that's listed, isn't that
24 right, sir?

25 A. Yes.

H3ndwal4

Davis - cross

1 Q. That was also not a Shelter Golf expense; isn't that right,
2 sir?

3 A. Actually, the Clinton Group was somebody I was trying to
4 market, who Daniel Strauss worked for, was somebody I was
5 trying to talk into becoming a sponsor of the tournament.

6 Counsel, I just don't recall that particular expense
7 item. Either I removed it and it was not a legitimate expense
8 in the final tax return or I didn't. So if you want to show me
9 the tax return, I could tell you.

10 Q. My only question to you now, sir, is isn't it a fact, sir,
11 that this was not a legitimate Shelter Golf expense?

12 A. I guess I can't agree with you on that.

13 Q. So your testimony -- and I am right, Daniel Strauss, that's
14 who you were working on the Park Cities deal at the time that
15 you testified about yesterday?

16 A. Yes.

17 Q. And that was that bank recapitalization you testified,
18 correct?

19 A. Yes.

20 Q. If we could -- sir, do you recall, in addition to your
21 testimony about the checks, you gave testimony about your tax
22 returns for Shelter Golf. Do you recall that, sir?

23 A. Yes.

24 Q. And you recall testifying that when Rick Mozley told you
25 that you had to disclose certain issues or potentially face

H3ndwal4

Davis - cross

1 penalties for the hundred thousand dollars you misappropriated,
2 you fired Rick Mozley and asked your longtime accountant Lon
3 Houseman to do the taxes? Do you recall that testimony, sir?

4 A. I don't think I said I fired Rick Mozley. What I said
5 yesterday was I went and got a new tax accountant.

6 Q. You replaced Rick Mozley with Lon Houseman, correct?

7 A. Correct.

8 Q. When you did that, Rick Mozley was no longer working as the
9 accountant for Shelter Golf, is that correct?

10 A. That is correct.

11 Q. You terminated his services?

12 A. That's correct.

13 Q. And you recall testifying, sir, yesterday that when you did
14 that, you provided the same information to Lon Houseman that
15 you gave to Rick Mozley to do the taxes? Do you recall that
16 testimony under oath before this jury?

17 A. Yes.

18 Q. And that was a lie, too, sir, wasn't it?

19 A. No. That was not a lie. That's accurate.

20 Q. Sir, let me show you what's been marked for identification
21 as Defense Exhibit 4057.

22 Sir, do you see this to be a -- if we can make it a
23 little bigger, Mr. McLeod. Thank you.

24 Do you see this as a fax for Shelter Government from
25 April Moffet, somebody -- to Carmelia, and it indicates it is

H3ndwal4

Davis - cross

1 providing information for taxes for 2014, and it is dated
2 August 6, 2012?

3 A. It's taxes for 2011.

4 Q. I'm sorry. 2011, right.

5 Do you see that, sir?

6 A. Yes.

7 MS. CUCINELLA: Your Honor, is this document in
8 evidence?

9 THE COURT: No.

10 MS. CUCINELLA: He's reading from it.

11 THE COURT: All right. Don't read from the document.

12 MR. BERKE: I'm just trying to help, your Honor. I
13 apologize.

14 Can we go to the bottom of it, as well.

15 Q. Sir, do you recognize that -- no just the bottom.

16 Do you recognize that mark on the bottom that says
17 your name and number as being something that came from a
18 production from you, sir?

19 A. April Moffet, yes.

20 Q. No. Do you see the bottom right, the Davis and a number?

21 A. The document number?

22 Q. Yes.

23 A. Yes.

24 MR. BERKE: Your Honor, I would offer Defense Exhibit
25 4057 into evidence.

H3ndwal4

Davis - cross

1 THE COURT: Any objection?

2 MS. CUCINELLA: No objection.

3 THE COURT: Received.

4 (Defendant's Exhibit 4057 received in evidence)

5 MR. BERKE: May I publish it, your Honor?

6 THE COURT: You may.

7 MR. BERKE: Mr. McLeod, can you blow that up as much
8 as possible. Thank you.

9 Q. Do you see, sir, it is on Shelter Golf, and it says please
10 find attached all the items that you requested to process the
11 taxes for 2011? Do you see that, sir?

12 A. Yes.

13 Q. And I'd like to now direct your attention to page 6 of this
14 document. And you see that is providing a Shelter Golf ledger,
15 general ledger, for 2011; do you see that?

16 A. Yes.

17 Q. And I'd like to bring your attention specifically to two
18 entries on this general ledger.

19 Do you see where it shows on August 29, 2011, a
20 hundred thousand dollars going out to you?

21 A. Yes.

22 Q. And then you see it being deposited again?

23 A. Yes, I see it.

24 Q. And then out again to Genesis Women. Do you see that, sir?

25 A. Yes.

H3ndwal4

Davis - cross

1 Q. And that's the general ledger that was initially provided
2 for your taxes by April Moffet, correct?

3 A. Yes, it is.

4 MS. CUCINELLA: Mr. Berke, can you clarify to whom
5 this was provided, since you are talking about two accountants?

6 MR. BERKE: Yes. If we can go to the first page.

7 OK.

8 Q. Do you see the date, sir, August 6, 33.

9 And you understand that it's being sent to someone who
10 works with your accountant at that time on August 6, 2012, who
11 worked for Rick Mozley.

12 A. Yes. I'm assuming that's who Camella is that worked for
13 Rick Mozley.

14 Q. OK. Now, sir, so -- and do you recall, let me show you a
15 document that is marked -- I will show you two documents,
16 Defense Exhibit 4156, for identification, and 4157, for
17 identification.

18 And you see that Defense Exhibit 41-six is an email
19 from Keleigh Wentworth of WENCPA, or the initial is
20 W-E-N-C-P-A, to you, with a copy to Lon Houseman, and it is
21 dated July 31, 2013; do you see that, sir?

22 A. Yes.

23 Q. And it says -- and you see the email refers to -- if you
24 look to the second to last sentence, it says, "and including an
25 attachment." Do you see that?

H3ndwal4

Davis - cross

1 A. Yes.

2 Q. Now let me show you Defense Exhibit 4157. And you see
3 that's Shelter Golf information. And if you can look at the
4 Bates numbers for the two documents; you see that, sir?

5 A. Yes.

6 MR. BERKE: Your Honor, I would offer in evidence
7 Defense Exhibit 4156 and 4157.

8 MS. CUCINELLA: No objection.

9 THE COURT: Received.

10 (Defendant's Exhibits 4156 and 4157 received in
11 evidence)

12 MR. BERKE: May I publish 4157 -- actually, if I can
13 publish them both?

14 THE COURT: If it is in evidence, you may publish it.

15 MR. BERKE: Thank you, Judge.

16 Q. So, sir, first you see that it is dated July 31, 2013; do
17 you see that, sir?

18 A. Yes.

19 Q. And Keleigh Wentworth works with Lon Houseman, correct?

20 A. Yes, I think so.

21 Q. You can see they have the same email address; do you see
22 that, sir?

23 A. Yes.

24 Q. It says, Hi, Tom, could you send over the balance sheet,
25 income statement and detail of all contributions received for

H3ndwal4

Davis - cross

1 Shelter Golf in 2012.

2 This is for 2012. Do you see that, sir?

3 A. Yes.

4 Q. It says, I'm trying to finish the tax returns, and it goes
5 on. And then it says, next sentence: Attached is what we
6 received last year as a reference.

7 Do you see that, sir?

8 A. Yes.

9 Q. Now, can we go to the attachment.

10 And you see, sir, that's what Lon Houseman -- that's
11 what Keleigh Wentworth is saying that Lon Houseman and she
12 received from you for 2011; do you see that, sir?

13 A. Yes.

14 Q. OK. And now can I put up side-by-side Defense Exhibit 4157
15 and Defense Exhibit 4057. On 4057 we are going to go to page
16 6.

17 If we could blow up the general ledger on 405 --
18 excuse me, on 4057.

19 OK. If you remember, sir, what you sent to Mr. Mozley
20 was the general ledger that showed the hundred thousand
21 dollars, correct?

22 A. Yes.

23 MR. BERKE: Are we able to put this side-by-side,
24 Mr. McLeod, if we can.

25 Q. OK. What you sent, when you switched to Mr. Houseman to do

H3ndwal4

Davis - cross

1 the returns, you sent him an income statement that was very
2 different from the general ledger you gave to Mr. Mozley,
3 correct?

4 A. This is incomplete, counselor. We also sent Mr. Houseman
5 the general ledger as well. This is incomplete.

6 Q. Are you being truthful about that, sir, as --

7 A. Totally truthful, yes.

8 MS. CUCINELLA: Objection to that question.

9 THE COURT: Sustained. Answer stricken.

10 Q. Let me refer you back, sir, to what is in evidence as
11 Defense Exhibit 4156.

12 MR. BERKE: And you could leave 4157 up, Mr. McLeod,
13 if you can do that.

14 Q. And you see in 2013 Miss Wentworth is sending, she says,
15 attached is a reference to what we received last year for the
16 taxes.

17 And you see, sir, the attachment that's part of this
18 document is the 4157. Do you see that, sir?

19 A. Yes, I see it.

20 Q. And you see, sir, that -- can you put back, excuse me,
21 Mr. McLeod, but if you can put back 4057, I want to show you
22 that this document -- did you create that income statement,
23 sir?

24 A. No, not that I know of.

25 Q. Let me show you. I will show you what it is.

H3ndwal4

Davis - cross

1 So if you see now, sir, look at, for example, the team
2 sponsorship numbers. It's hard to see.

3 MR. BERKE: If you can go a little bigger, Mr. McLeod,
4 on the general ledger. Just to show more of it. And if you
5 can get down a little further. OK.

6 Q. So you see, sir, you see the number, you have -- I think we
7 are going to have to make it a little smaller. OK.

8 Oh, and -- sir, I'm sorry. Can you go to the next
9 page.

10 OK. And you see, sir, what you said to Mr. Mozley as
11 team sponsorship, still on the right side, 338,400?

12 A. Yes.

13 Q. And then in this income statement that was provided to
14 Mr. Houseman, you see you just have it as one general number
15 without the breakdown?

16 A. Yes. Yes.

17 Q. And if you look at the expenses and everything, the total
18 income, the sponsorship, the donations, it is all split down.
19 Do you see that, sir?

20 A. Yes.

21 Q. And it is done in a way that doesn't disclose the details,
22 including the hundred thousand that you had misappropriated
23 from Shelter Golf; isn't that right, sir?

24 A. An income statement is not going to show that. So what I'm
25 trying to explain to you is this is incomplete information. My

H3ndwal4

Davis - cross

1 assistant also provided the auditor the bank records, which
2 clearly showed the hundred-thousand-dollar check and clearly
3 showed the hundred-thousand-dollar deposit. So this income
4 statement does not reflect that.

5 Q. Let me ask you this, sir. Do you recall that you signed
6 the tax returns for 2011?

7 A. Yes.

8 Q. Let me show you what's marked as Defense Exhibit 2075, for
9 identification. 2075.

10 This is the Shelter Golf tax return for 2011, correct,
11 sir?

12 A. Yes.

13 MR. BERKE: Your Honor, I would offer in evidence
14 Defense Exhibit 2075.

15 MR. GOLDMAN: One minute, your Honor.

16 (Pause)

17 MS. CUCINELLA: We have no objection. We just ask
18 defense counsel to be careful if there is any identifying or
19 otherwise private information relating to the charity, which is
20 still ongoing, that it be redacted before it be made publicly
21 available.

22 MR. BERKE: We will consult with the government and do
23 that.

24 THE COURT: OK. Received subject to redactions of
25 identifying information.

H3ndwal4

Davis - cross

1 (Defendant's Exhibit 2075 received in evidence)

2 MR. BERKE: Thank you, your Honor.

3 And if I may publish it?

4 THE COURT: You may.

5 Q. And this is the 2011 Shelter Golf tax return, correct, sir?

6 A. Yes.

7 Q. Can I go to the signature page, at 13.

8 So that's your signature, dated November 30, 2012,
9 correct?

10 A. Yes, it is.

11 Q. And you see above it you said, "Under penalties of perjury,
12 I declare that I have examined this return, including
13 accompanying schedules and statements, and to the best of my
14 knowledge and belief, it is true, correct, and complete." Do
15 you see that, sir?

16 A. Yes, I do.

17 Q. And underneath you it says the paid preparer, that is Lon
18 Houseman, correct?

19 A. Yes, it is.

20 Q. And he signs it as well.

21 Now, sir, can I show you the questions that are being
22 asked on page 11, part 7B of the tax return?

23 I'm sorry. It is -- maybe it is at page 13. There it
24 is.

25 I'm sorry. We are going to this one that says,

H3ndwal4

Davis - cross

1 "Statements regarding activities for which form 4720 may be
2 required."

3 Yes. And you see, sir, it asks "During the year, did
4 the Foundation," and then it includes a question, "Borrow money
5 from, lend money to, or otherwise extend credit to (or accept
6 it from) a disqualified person?"

7 Do you see that, sir?

8 A. Yes, I do.

9 Q. That's checked "No," correct?

10 A. It is. That's correct.

11 Q. And that is a lie; that is not true, correct?

12 A. Yes. I think I've already admitted this, yes.

13 Q. That's tax fraud?

14 A. I'll let somebody else determine that, but it's a lie, for
15 sure.

16 Q. You pled guilty to tax fraud, didn't you, sir?

17 Well, withdrawn.

18 Is it your testimony that Lon Houseman signed that
19 document, as well, knowing that this had a lie on it? Is that
20 your testimony, sir?

21 A. I don't know that Lon Houseman knew that at the time.

22 Q. Well, if he had the general statement, the general ledger,
23 he would have seen it, wouldn't he have?

24 A. He had it. I can tell you he did, for sure. He had the
25 same information I gave Rick Mozley.

H3ndwal4

Davis - cross

1 Q. The same information that Rick Mozley said he would have to
2 check the right box and subject you and the organization to
3 penalties; is that your testimony, sir?

4 A. Absolutely.

5 Q. And you recall, sir, later on, for both 2011 and 2012 --
6 sir, do you recall, as well, that in 2012 you also signed a
7 document -- well, let me ask you this, sir.

8 Do you recall that the IRS started asking questions
9 and had concerns about your tax returns?

10 A. About my personal tax returns?

11 Q. No. The tax returns for Shelter Golf.

12 A. What was the question? What timeframe?

13 Q. Let me ask you this, sir.

14 Do you recall there was a time that Lon Houseman
15 started to ask you questions about your expenses and you blamed
16 the problems with bad bookkeeping by April Moffet?

17 A. I don't recall exactly how that conversation was initiated,
18 but I certainly recall having a discussion with him about
19 correcting the expenses.

20 Q. And you blamed it on April Moffet's bad bookkeeping as the
21 problem; correct, sir?

22 A. I don't recall precisely how I discussed it with Lon.

23 Q. Let me show you what's been marked for identification as
24 4199.

25 I would ask you to look at the email that begins -- it

H3ndwal4

Davis - cross

1 is the one below -- could you go below that? Yep. Review that
2 to yourself, sir.

3 (Pause)

4 You recall, sir, blaming April Moffet's bookkeeping
5 for the problems you had keeping straight your expenses?

6 A. I certainly recall this email. That email was from me.
7 Yes.

8 Q. And you recall, sir -- do you recall, sir, that for 2012
9 you also signed a false tax return that didn't reflect that you
10 had gotten money from Shelter Golf and you signed and swore to
11 it; do you recall that?

12 A. Yes.

13 Q. Isn't it a fact, sir, that when the IRS began
14 investigating, you came up with a story that the reason you had
15 so much trouble filing the returns is because your computer
16 crashed and your QuickBooks had to be reconstructed and that's
17 why you were so late with these filings? Do you recall that,
18 sir?

19 A. I do recall that, yes.

20 Q. Again, these were all lies, more lies to cover up your
21 original lies, correct, sir?

22 A. I'm not sure that was inaccurate at the time.

23 Q. So the reason you had such a hard time paying your taxes is
24 because you were trying to avoid revealing that you
25 misappropriated money from the charity, correct?

H3ndwal4

Davis - cross

1 A. We were late in filing the tax return, that's totally
2 accurate.

3 Q. And you were late, sir, because you were trying to figure
4 out ways to file without getting caught for misappropriating
5 money from Shelter Golf, correct, sir?

6 A. I think that's probably accurate, yes.

7 Q. And that's what delayed you, sir. So when you told the IRS
8 that the reason you were delayed and you should not have to pay
9 late fees and penalties is because somebody's computer crashed
10 and you lost the information, that, too, was a lie, wasn't it,
11 sir?

12 A. No. I think that was also a factor.

13 Q. So it's your testimony that that part is true?

14 A. It's my testimony that that part is true, yes.

15 Q. Sir, let's move on to your personal taxes.

16 Personally, you did not file tax returns for many
17 years, correct?

18 A. Yes, that's accurate.

19 Q. By the time you made your deal with prosecutors, you hadn't
20 filed tax returns since 2011, correct?

21 A. I think that's accurate, yes.

22 Q. You also cheated on your personal taxes, too, didn't you,
23 sir?

24 A. I don't recall that, no.

25 Q. Well, did you disclose --

H3ndwal4

Davis - cross

1 A. I actually have to amend the tax return. Yes, I do recall
2 that.

3 Q. You haven't done that yet, have you, sir?

4 A. I have not made the amendment, no.

5 Q. In addition to -- among other inaccuracies in what you have
6 filed, you also -- you've never disclosed your gambling
7 winnings to the IRS, have you?

8 A. I don't think that's accurate. I have from time to time in
9 various years.

10 Q. Did you disclose any winnings in 2010?

11 A. I have to go back and look at my tax returns. I couldn't
12 tell you off the top of my head.

13 Q. In 2011, had you told your accountants who you work with
14 about any gambling winnings you forgot to include in your tax
15 returns?

16 A. Counselor, I have to go back and refer to my tax returns.
17 I can't tame you off the top of my head.

18 Q. Can you tell me one year -- tell me the decade it is in --
19 in which you declared gambling winnings on your taxes? Give me
20 a decade.

21 A. I cannot answer the question without going back and looking
22 at my tax returns.

23 Q. Was it in the last 20 years?

24 A. The answer is the same. I cannot answer that specifically
25 without referring to my tax returns.

H3ndwal4

Davis - cross

1 Q. And you knew, sir, going into 2016, that you heard from Lon
2 Houseman -- Lon Houseman handled your personal taxes, correct?

3 A. Yes.

4 Q. And you knew that the IRS was pressing down about your
5 personal taxes, as well, going into -- the end of 2015, going
6 into 2016, isn't that true, sir?

7 A. I'm not sure what you mean by "pressing down." If you can
8 be more specific, I could answer it.

9 Q. You were getting IRS notices for your failure to pay income
10 tax and file income -- or file tax returns, isn't that true,
11 sir?

12 A. Yes. I got some notices, yes.

13 Q. So you felt like the pressure was building on you from the
14 IRS at the end of 2015 going into 2016, didn't you, sir?

15 A. I don't recall that specifically, but I filed all my tax
16 returns at this point, yes.

17 Q. At what point are you talking about, sir?

18 A. I'm sorry?

19 Q. What point are you talking about?

20 A. My personal tax returns.

21 Q. At what point did you say you filed all your returns?

22 A. They are all filed.

23 Q. Today?

24 A. They have been, yes.

25 Q. So they weren't filed in late 2015, were they?

H3ndwal4

Davis - cross

1 A. No, they were not.

2 Q. Going back to 2011, they not been filed?

3 A. I think that's accurate, yes.

4 Q. And the IRS was pressing you, correct?

5 A. Yes. Of course.

6 Q. I think you said, sir, that -- in your direct testimony,
7 you said that in the summer of 2014, you thought there was only
8 a SEC investigation, not a criminal investigation; do you
9 recall that testimony, sir?

10 A. Yes, I do.

11 Q. That's not true, is it, sir?

12 A. In the summer of 2014, I thought it was only an SEC
13 investigation. Yes, that was my understanding.

14 Q. So the FBI came to visit your house, correct?

15 A. Yes, they did.

16 Q. In May of 2014, correct?

17 A. Yes.

18 Q. In May of 2014, the Wall Street Journal published a big
19 article about that the FBI and criminal authorities are
20 investigating whether information about Dean Foods was leaked;
21 isn't that true, sir?

22 A. Yes.

23 Q. The articles referred to -- in May and June referred to the
24 FBI and a criminal investigation into whether Dean Foods'
25 information was leaked; isn't that true, sir?

H3ndwal4

Davis - cross

1 A. I don't remember the article specifically, but I know there
2 was an article in -- at that point in time, yes.

3 Q. You don't recall the articles talked about a criminal
4 investigation?

5 A. I think they were investigating Mr. Walters. That's what
6 the article referred to.

7 Q. And leaks at Dean Foods, correct?

8 A. Yes.

9 Q. You knew there was a criminal investigation, correct?

10 A. I knew that Mr. Walters was being investigated, yes.

11 Q. Sir, is it your testimony that you thought that was just an
12 investigation of Mr. Walters and didn't involve you, it was of
13 no concern to you, given your testimony; is that your
14 testimony, sir?

15 A. It is my testimony that at that point in time I did not
16 know that I was going to be under investigation.

17 Q. Sir, isn't it a fact that you knew that in July of 2015,
18 April Moffet was interviewed by the U.S. Attorney's Office and
19 the FBI, and they interviewed her about you and Shelter Golf;
20 isn't that true, sir?

21 A. Yes, I was aware of that. Yes.

22 Q. You knew that because you had your own lawyers represent
23 April Moffet when she was interviewed by the U.S. Attorney's
24 Office, the FBI, and the SEC; isn't that true, sir?

25 A. I think that's accurate, yes.

H3ndwal4

Davis - cross

1 Q. And you knew that what they asked her about in that
2 interview was about the money you misappropriated from Shelter
3 Golf and your misstatements about it; isn't that true, sir?

4 A. I'm not sure I heard the question.

5 Q. You knew what they questioned April Moffet about in July of
6 2015 was the money you misappropriated from Shelter Golf and
7 your many misstatements about it; isn't that true, sir?

8 A. Yes, I was aware of what they questioned her about, yes.

9 Q. And you knew that was an investigation of you, sir,
10 correct?

11 A. I could certainly assume that, yes.

12 Q. Mr. Walters had nothing to do with Shelter Golf, correct?

13 A. Not that I am aware of, no.

14 Q. He didn't know anything about the money you stole from
15 Shelter Golf, did he?

16 A. Not that I am aware of, no.

17 Q. He didn't know that the testimony that you gave to the SEC
18 about Shelter Golf was a lie, did he?

19 A. Not that I'm aware of, no.

20 Q. He didn't know that you had filed false tax returns about
21 Shelter Golf, did he?

22 A. Not that I am aware of, no.

23 Q. You knew, though, that the FBI was circling, because not
24 only that, you also learned at the end of the summer -- right
25 after the summer, in September, that the FBI went to visit your

H3ndwal4

Davis - cross

1 friend Joe Palladino's restaurant, Nick & Sam's, to try to
2 prove that what you put down as a dinner with Mike Rawlings as
3 the keynote speaker, that that was a lie and perjury, too; you
4 knew about that, too, sir, didn't you?

5 A. I became aware of that, yes.

6 Q. You knew then, sir, that this was an investigation about
7 you and what you did with regard to Shelter Golf and your
8 perjury and obstruction with regard to the SEC and the FBI;
9 isn't that true, sir?

10 A. I was aware of the investigation.

11 Q. My question, sir, is not that. My question is you knew
12 that they were investigating you and your crime regarding
13 Shelter Golf; isn't that true, sir?

14 A. Frankly, counselor, I was -- I was aware that they were
15 focusing on the insider trading charges, and little was said
16 about Shelter Golf as far as the investigation was concerned.

17 Q. April Moffet, she was questioned all about Shelter Golf,
18 correct?

19 A. I wasn't there for the interview.

20 Q. No. But your lawyers were and they gave you a full report
21 about it, didn't they, sir?

22 A. They gave me a report, yes.

23 Q. And you knew she was questioned all about Shelter Golf and
24 your role in taking money out of that charity, isn't that true?

25 A. Pardon me. Do you want to finish the question? I'm sorry.

H3ndwal4

Davis - cross

1 Q. I'm done.

2 A. I was aware of the fact that she was interviewed, yes.

3 Q. And interviewed, sir, about your crimes related to Shelter
4 Golf, correct?

5 A. I think she was interviewed about a variety of things,
6 including my communications with Mr. Walters as well.

7 Q. She didn't know anything about that, did she?

8 A. I wasn't there for the interview.

9 MS. CUCINELLA: Objection.

10 THE COURT: Overruled.

11 Do you know whether she knew anything about that?

12 THE WITNESS: Pardon me?

13 THE COURT: Do you know whether Ms. Moffet knew
14 anything your communications with Mr. Walters?

15 THE WITNESS: Well, she knew a lot about my
16 communications with Mr. Walters, not about my inside
17 information that I gave him, but she knew a lot about my
18 communications and my relationship with Mr. Walters.

19 THE COURT: Thank you.

20 Next questions.

21 BY MR. BERKE:

22 Q. She knew you talked on the phone with him, right?

23 A. Yes.

24 Q. She didn't know anything about the substance of what you
25 talked about, correct?

H3ndwal4

Davis - cross

1 A. No.

2 Q. But she did know about the money you took from Shelter
3 Golf, didn't she?

4 A. Yes.

5 Q. And Joe Palladino and Nick & Sam, that had nothing to do
6 with Mr. Walters, did it?

7 A. No.

8 Q. It had nothing to do with any alleged insider trading, did
9 it?

10 A. Not that I'm aware of, no.

11 Q. That related to your crimes with regard to Shelter Golf,
12 didn't it?

13 A. Yes.

14 Q. And then in August, sir, the next month, do you recall
15 learning that the Wall Street Journal was going to do a big
16 article about how you were also being criminally investigated
17 with regard to Dean Foods?

18 A. I became aware that there was going to be a news article,
19 yes.

20 Q. And you recall, sir, that you were forced to resign from
21 Dean Foods because of that article?

22 A. Yes. I was asked to resign and I did.

23 Q. And you recall, sir, describing that as a very rough week
24 for you?

25 A. I think that's totally accurate, yes.

H3ndwal4

Davis - cross

1 Q. And you recall, sir, the article came out, and it
2 specifically mentioned you in a criminal investigation into
3 whether you leaked information about Dean Foods and its
4 performance; do you recall that, sir?

5 A. Yes, I recall the article. It didn't mention anything
6 about Shelter Golf, strangely enough.

7 Q. That hadn't become public yet, had it?

8 (Pause)

9 That hadn't become public yet, had it, sir?

10 A. The article certainly didn't mention it.

11 Q. No. The fact that you misappropriated money from Shelter
12 Golf had not become public yet, had it, sir?

13 A. I don't think it had, no.

14 Q. And that was very important for you, to try to protect your
15 role with Shelter Golf, wasn't it, sir?

16 A. I was -- I was embarrassed by it, yes. It was not one of
17 my prime moments.

18 Q. When the article came out in the Wall Street Journal in
19 August, you believe you felt you were being hounded by
20 reporters, didn't you?

21 A. I was being hounded by reporters, as a matter of fact, as
22 were my family members.

23 Q. And you continued to all your friends maintaining your
24 innocence, saying you've done nothing wrong; isn't that true,
25 sir?

H3ndwal4

Davis - cross

1 A. Yes. That's totally accurate.

2 Q. You said that, you know, the government's working on it for
3 15 months, but you did nothing wrong and you're hanging in
4 there; isn't that right, sir?

5 A. I think that's totally accurate. I was still denying the
6 truth.

7 Q. You didn't tell anybody that's what -- you told everybody
8 that was the truth that you didn't do anything wrong with
9 regard to Dean Foods; isn't that true, sir?

10 A. Yes, that's accurate.

11 Q. Do did your lawyers in September 2015, correct?

12 A. Yes. It was totally accurate.

13 Q. And you're also suffering even more financial problems,
14 true, sir?

15 A. I'm not sure what you are a referring to.

16 Q. Well, you were more or less unemployed, weren't you?

17 A. Yes. I was no longer receiving board fees from Dean Foods,
18 but I was still on the board of two other companies.

19 Q. Well, actually, sir, didn't -- after the article, didn't
20 you ultimately have to resign and you did resign from the other
21 boards you were on?

22 A. I didn't resign from the other boards until I signed my
23 cooperation agreement with the government.

24 Q. Well, sir, you resigned -- well, sir, you resigned from --
25 sir, do you recall -- let me ask you this: Do you recall that

H3ndwal4

Davis - cross

1 you still owed money to a variety of different people?

2 A. I'm not sure who you are referring to.

3 Q. You owed The Walters Group over \$800,000, didn't you?

4 A. Oh, yes, that's correct.

5 Q. Your second wife Louise claimed that you owed her
6 substantial money from your divorce going back in time, isn't
7 that true, sir?

8 A. She filed a lawsuit about it, yes.

9 Q. And you were concerned about legal fees, isn't that right,
10 sir?

11 A. I don't specifically recall that being a concern.

12 Q. Well, didn't you tell your daughter Whitney in August of
13 2015 you couldn't help her with \$4,000 in moving expenses
14 because you were hoarding your cash for legal fees in the event
15 of a long drawn-out process with the SEC; do you recall that,
16 sir?

17 A. No, I don't recall that. I recall having some
18 correspondence with her, but you might be taking that out of
19 context. I'd love to see something.

20 Q. Let me show you what's marked as Defense Exhibit 4789. And
21 I'd highlight the bottom email, and ask you to review it to
22 yourself. I think -- Mr. McLeod, is there a second page to
23 this? The entry at 12/24. There you go. At the bottom.

24 If you need to see the amount, I can show you the
25 prior email.

H3ndwal4

Davis - cross

1 Sir, I'm directing your attention now to the bottom
2 sentence of this, beginning with "Regrettably."

3 Does that refresh your memory, sir, did you tell your
4 daughter you had to hoard cash for legal fees in the event of a
5 long, drawn-out process with the SEC?

6 A. Counselor, again, I think you're taking this out of
7 context --

8 THE COURT: No.

9 THE WITNESS: Sorry.

10 THE COURT: We've had this conversation before. We're
11 going to have it again.

12 THE WITNESS: OK. Pardon me.

13 THE COURT: The question is whether reading this
14 document refreshes your recollection.

15 Read the document. And the only question you're being
16 asked is whether it refreshes your recollection on the subject
17 of the question.

18 THE WITNESS: I'm sorry, your Honor.

19 THE COURT: That's it. Nothing else.

20 THE WITNESS: Pardon me. I get it. I'm sorry.

21 THE COURT: All right?

22 THE WITNESS: Yes, sir.

23 THE COURT: Does it refresh your recollection?

24 THE WITNESS: Yes, it does.

25 BY MR. BERKE:

H3ndwal4

Davis - cross

1 Q. And you said that, correct, sir?

2 A. I'm sorry?

3 Q. Isn't that what you said, you were looking to hoard cash --

4 THE COURT: No, that is sustained. That is sustained,
5 Mr. Berke. You know the rules.

6 MR. BERKE: Fine, your Honor.

7 Q. Sir, during this time, you knew you could be prosecuted for
8 lying under oath in your tax returns you filed on behalf of
9 Shelter Golf; isn't that correct, sir?

10 A. When you say during this period of time, what are you
11 referring to?

12 Q. September 2015.

13 A. I was more concerned about being prosecuted for insider
14 trading charges.

15 Q. So you knew at this time you had lied on your tax returns,
16 didn't you?

17 A. On the Shelter Golf tax returns, yes.

18 Q. You knew that you had misappropriated money from Shelter
19 Golf and you were under investigation by the FBI and the U.S.
20 Attorney's Office for that, isn't that right, sir? We just
21 established in September they visited Nick & Sam's. In the
22 month prior, April Moffet was interviewed about it. Do you
23 recall that, sir?

24 THE COURT: Sustained as to form.

25 Q. You knew in -- sorry, your Honor.

H3ndwal4

Davis - cross

1 You remember in September of 2015 that you were being
2 investigated criminally for Shelter Golf, correct?

3 A. Counselor, I'd already paid the money back to Shelter Golf
4 by September of 2015. It was -- I was more concerned about the
5 insider trading charges, I can assure you.

6 Q. Sir, you knew you could be prosecute for your crimes
7 related to Shelter Golf, correct?

8 A. Yes.

9 Q. That's why you tried to cover it up for so many years,
10 isn't that true, sir?

11 A. It was something I regretted greatly doing, and I hated to
12 admit I made such a poor decision.

13 Q. And you didn't want to get caught, correct, sir?

14 A. I just told you, I was more embarrassed about it than
15 anything else.

16 Q. You didn't want to get caught and get in trouble, isn't
17 that true, sir?

18 A. I was more concerned about my insider trading crimes than
19 anything else in my life.

20 Q. Did you want to get caught for Shelter Golf crimes, sir?

21 A. Of course not.

22 Q. And you knew, sir, you learned, didn't you, that the
23 penalties you faced for perjury, your SEC testimony about
24 Shelter Golf, you could go to jail for up to five years; you
25 knew that, sir, didn't you?

H3ndwal4

Davis - cross

1 A. Yes.

2 Q. And you knew for tax fraud, for each instance of tax fraud,
3 you could go to jail for another five years for each instance
4 of tax fraud; isn't that true, sir?

5 A. I'm not familiar with the penalties for tax fraud, but I
6 knew it was a serious consequence.

7 Q. You knew that you faced upwards of 20 years for obstruction
8 of justice; didn't you learn that from your counsel?

9 A. I don't recall exactly reviewing the penalties for
10 obstruction of justice, no.

11 Q. But you knew you faced a lot of time in jail if you were
12 prosecuted; isn't that right, sir?

13 A. Yes.

14 Q. Is it fair to say, sir, that in late 2015/early '16, you
15 were in quite a jam and you needed to get a benefit for
16 yourself, didn't you, sir?

17 A. I didn't hear the end of the question.

18 Q. You needed to get a benefit for yourself?

19 A. I can agree to the first part of the question. Certainly I
20 knew I was in a jam, yes.

21 Q. And a jam you wanted to get out of, correct?

22 A. I hadn't figured it out at that point in time.

23 Q. You recall, sir, in August of 2015 you had made
24 arrangements to meet with your wife, Louise Davis, right after
25 the Wall Street Journal articles came out to discuss those

H3ndwal4

Davis - cross

1 articles with her?

2 A. Actually, she made arrangements with me. She initiated it,
3 not me.

4 Q. Do you recall, sir, that you picked her up at Nieman's in
5 Dallas, North Park, in the afternoon, you picked her up in your
6 car?

7 A. Yes. That's accurate, yes.

8 Q. Do you recall, sir, you drove her to a cemetery?

9 A. Yes.

10 Q. And you recall, sir, you asked her if she was wearing a
11 wire? Do you recall that, sir?

12 A. Yes, I think I did ask her that. Yes.

13 Q. And you told her, sir, didn't you, that you asked her not
14 to speak to the FBI or SEC? You told her, I don't think they
15 want me. They just want me to roll over on Billy Walters.

16 Isn't that what you told your second wife, Louise, in
17 August of 2015?

18 A. That is totally not accurate.

19 (Continued on next page)

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H3n3wal5

Davis - cross

1 Q. So that didn't happen, sir, is that your testimony? You
2 deny saying that, sir?

3 A. I deny saying that to her in the car as we met, yes.

4 Q. You deny saying that to her at any time?

5 A. I never said it to her at any time, no. I deny it.

6 Q. You testified, sir, at some point in early 2016, you hired
7 new lawyers, correct?

8 A. I don't recall whether it was December or January.

9 December of 2015 or January, I'm not sure. But around that
10 point in time, yes.

11 Q. You hired lawyers to see if they could get you a deal that
12 you hoped might help you avoid jail, correct?

13 A. I wouldn't characterize it that way. I hired special
14 counsel who was familiar with insider trading charges and had a
15 good relationship with the prosecutor's office.

16 Q. So one of the lawyers hired had just left that prosecutor's
17 office, correct?

18 A. I don't know when he left, I'm not sure.

19 Q. But they were in the same prosecutor's office, correct?

20 A. Yes, I think so.

21 Q. You recall, sir, that while you were in this process, after
22 a number of meetings, you told your friends that you're meeting
23 in New York with the bad guys? Do you recall that, sir?

24 A. I don't recall that specifically, no.

25 Q. Let me show you what's been marked for identification as

H3n3wal5

Davis - cross

1 4687. The top e-mail, please. Read that to yourself, sir.

2 Sir, I'll ask you again, does that refresh your memory
3 that in March 22, 2016, you told one of your friends that
4 you're going back to New York to meet with the bad guys?

5 A. That refreshes my memory, yes.

6 Q. Sir, I'd ask you to identify for the record who in this
7 courtroom you were referring to as the bad guys in March of
8 2016?

9 A. Probably the prosecutors, I assume.

10 Q. Individuals at the first table, correct?

11 A. Yes.

12 Q. Isn't it a fact, sir, that you were just pretending to have
13 remorse and pretending to have turned a leaf. You were still
14 viewing them as the bad guys, and this was just another one of
15 your schemes. Isn't that true, sir?

16 A. What's the question again? I'm not following you.

17 Q. You referred to them as bad guys because you were just
18 pretending to have turned over a new leaf to try to get your
19 deal, isn't that true, sir?

20 A. No. Look, this e-mail was to a good friend of mine, I said
21 that in some levity, frankly, when I responded to him. So, I
22 wasn't referring to the prosecutors in a demeaning fashion at
23 all.

24 Q. You were pretending to turn over a new leaf just so you
25 could get your deal, isn't that true?

H3n3wal5

Davis - cross

1 A. I'm not sure I follow your question. Pretending to do
2 what?

3 Q. You were lying to the prosecutors so you could get your
4 deal, and you were pretending to think they were the good guys
5 when you still thought they were the bad guys.

6 A. Counselor, I absolutely did not lie to the prosecutors when
7 I started this process of interviewing with them.

8 Q. Sir, do you recall in March of 2016 you felt like your
9 house was burning down because you had so many problems, given
10 all you were getting caught for all the crimes you committed?

11 A. At what time was this?

12 Q. March of 2016.

13 A. Yes. That's probably true.

14 Q. Didn't you tell people, sir, that you expected, based on
15 your deal, that you would not serve any jail time for what you
16 did?

17 A. That was my wish, yes.

18 Q. And you told people that's what you think was going to
19 happen, didn't you?

20 A. I was hoping that was the case, yes.

21 Q. That's what you told people that that's what you expected,
22 correct?

23 A. Yes, sir, I'm sure I did. That was my wish.

24 Q. You recall, sir, from your plea in this case and your
25 cooperation agreement that you face spending the rest of your

H3n3wal5

Davis - cross

1 life in jail? Isn't that true, sir?

2 A. Yes, that's accurate.

3 Q. And you felt the benefit of this deal when you would go
4 from that to potentially no jail at all?

5 A. I'm not going to make any bones about it. I was hoping
6 that my cooperation agreement and providing cooperation to the
7 government would help me avoid going to jail, yes.

8 Q. You also knew that you faced and still face losing all your
9 assets, isn't that true, sir?

10 A. It's possible, yes.

11 Q. There's fines of \$5 million or more, correct, sir?

12 A. Yes.

13 Q. Restitution you could be ordered to pay, correct?

14 A. I think that's accurate, yes.

15 Q. And you're hoping that based on your deal, you're going to
16 get to keep the assets you have remaining, don't you, sir?

17 A. I'm primarily hoping I can avoid going to jail, counselor.

18 Q. You want to keep your money, too, though as well?

19 A. I think that's somewhat secondary.

20 Q. I understand. But that in your mind, that would be the
21 best deal for you. No jail, and you get to keep most of your
22 money and you get to continue your lifestyle. That's what you
23 want, isn't that true, Mr. Davis?

24 A. I think that's a fair summary, yes.

25 THE COURT: Do you have much more, Mr. Berke?

H3n3wal5

Davis - cross

1 MR. BERKE: I do, your Honor.

2 THE COURT: How much more do you have?

3 MR. BERKE: Quite a bit, your Honor.

4 THE COURT: Give me an estimate.

5 MR. BERKE: I'm clearly going to go over into next
6 week, your Honor.

7 THE COURT: Give me an estimate. I think I'm entitled
8 to ask that question.

9 MR. BERKE: Of course, your Honor. I'm doing the
10 math.

11 THE COURT: I'm entitled to get an answer.

12 MR. BERKE: I'm doing the math in my head.

13 THE COURT: Thank you, sir.

14 MR. BERKE: So I believe, your Honor, it's
15 approximately a day and a half.

16 THE COURT: How many hours, sir?

17 MR. BERKE: Approximately 11 hours, your Honor.

18 THE COURT: Ladies and gentlemen, we'll take a
19 midafternoon recess. Do not discuss the case among yourselves
20 or with anyone. We'll be back in 15 minutes.

21 (Jury excused)

22 (Continued on next page)

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H3n3wal5

Davis - cross

1 THE COURT: Mr. Berke, let me tell you out of the
2 presence of the jury. If I hear one word of repetition of your
3 cross-examination, if you go back over any area of
4 cross-examination that you have already covered, I will sustain
5 an objection on grounds of cumulativeness. Do you understand
6 that, sir?

7 MR. BERKE: I do, your Honor. Thank you.

8 THE COURT: Go over your notes and arrange your
9 affairs so that there is no duplication of any questioning in
10 the ensuing 11 hours. Do you understand that, sir?

11 MR. BERKE: I understand, your Honor.

12 THE COURT: Thank you very much.

13 MR. BERKE: Thank you.

14 (Recess)

15 (Continued on next page)

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H3n3wal5

Davis - cross

1 (In open court; jury present)

2 THE COURT: How are you doing, ladies and gentlemen?

3 A JUROR: Hanging in there.

4 THE COURT: Temperature is okay? All right. You let
5 me know if you need anything or anything I can do to make the
6 jury experience better for you, and I'm going to do what I can,
7 all right.

8 A JUROR: Thank you.

9 THE COURT: Yes. Too cold?

10 A JUROR: Too cold, too hot.

11 THE COURT: Whoa.

12 A JUROR: One minute it's hot, hot, hot, the next
13 minute it is cold, cold, cold.

14 THE COURT: Maybe the best I can suggest, because
15 you're not the first person to have pointed this out. But what
16 I'm going to suggest is, for example, on the too cold part,
17 bring something with you.

18 A JUROR: I do.

19 A JUROR: Mine got confiscated by No. 6.

20 THE COURT: You're too much of a gentleman. Hey, I
21 have a scarf, I can lend you my scarf too. All right.

22 All right, ladies and gentlemen, we're back in action.
23 Go ahead, Mr. Berke.

24 MR. BERKE: Thank you, your Honor.

25 BY MR. BERKE:

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Davis - cross

1 Q. Mr. Davis, I'd like to ask you about a document marked for
2 identification as Defense Exhibit 4914. Is that an e-mail to
3 you from Fin Ewing and Bill Duval dated May 26, 2016?

4 A. Yes, I see it.

5 Q. They were fellow directors of Shelter Golf, correct?

6 A. Yes, Bill was the co-chairman with me.

7 MR. BERKE: Your Honor, I'd offer Defense Exhibit
8 4914.

9 THE COURT: Any objection?

10 MS. CUCINELLA: No objection.

11 THE COURT: Received.

12 (Defendant's Exhibit 4914 received in evidence)

13 MR. BERKE: Your Honor, may I publish?

14 THE COURT: You have a standing instruction that you
15 may publish any document that's received in evidence. You
16 don't need to ask. Okay?

17 MR. BERKE: Thank you, your Honor.

18 THE COURT: That's been the standing instruction.

19 MR. BERKE: Thank you, your Honor.

20 Q. Sir, this is May 26. That's after your deal with the
21 prosecutors, correct?

22 A. Yes.

23 Q. May I highlight the last paragraph of your e-mail. You
24 write, sir, "As said in my earlier e-mail, I was not charged
25 with any wrongdoing pertaining to Shelter Golf, and the charges

H3n3wal5

Davis - cross

1 I pled guilty to had nothing to do with Shelter Golf. I say
2 that to set the record straight. This has been a grueling
3 process for me. I hope you'll accept my apologies for any
4 embarrassment that I have caused this wonderful charity. The
5 prosecutors went to great extent to help me protect Shelter
6 Golf and the SEC needlessly did not follow suit. Let me know
7 what you want me to do with the audit process."

8 That's what you wrote, correct, sir?

9 A. Yes.

10 Q. And sir, do you recall around this time, too, that you had
11 meetings with the board of your golf course, your golf club,
12 where you hosted Shelter Golf, Preston Trails, and tried to
13 persuade them to keep you as a member?

14 A. Actually that's not correct.

15 Q. Do you recall wanting to meet with them to tell them your
16 side of the story?

17 A. I recall getting a call from the president of Preston Trail
18 Golf asking me to resign.

19 Q. Do you recall, sir, talking to Troy Philips about your
20 desire to continue with Preston Trails?

21 A. Yes, I do.

22 Q. Do you recall telling Troy Phillips that you thought you
23 wouldn't serve jail time, and that differentiated you from
24 other members who went to jail and were kicked out?

25 A. I don't recall the substance of the conversation with Troy,

H3n3wal5

Davis - cross

1 but I asked him to help me with regard to the board because I
2 wanted to remain a member.

3 Q. Do you recall, sir, showing surprise following your deal
4 when the club kicked you out?

5 A. I was not surprised. I was disappointed.

6 Q. So let me show you what's been marked as Defense Exhibit
7 4602. I'll ask you to look at it, sir. It's not an e-mail of
8 yours, I just want you to look at it. I'm going to direct your
9 attention to the last paragraph of that e-mail. All the way
10 down. Read that to yourself, sir.

11 (Pause)

12 Q. My question for you, sir, does that refresh your memory
13 that you expressed surprise that Preston Trails was taking
14 steps to kick you out?

15 A. Yes. It does refresh my memory.

16 Q. Sir, let me show you what's been marked as Defense Exhibit
17 4597. Do you recognize that as your letter to Preston Trails
18 when they told you that you had to leave the club dated June 4,
19 2016?

20 A. This is my resignation letter to the board of directors.

21 Q. You were told you had to resign, correct?

22 A. I was asked to resign.

23 MR. BERKE: Your Honor, I would offer Defense Exhibit
24 4597.

25 THE COURT: How is this relevant?

H3n3wal5

Davis - cross

1 MR. BERKE: Your Honor, I'm offering it for the fourth
2 paragraph. Beginning "I would like." For the importance of
3 the agreement.

4 THE COURT: I think any slight probative value of this
5 letter is substantially outweighed by it being a waste of time.

6 MR. BERKE: Okay. I'll move on, your Honor.

7 Q. Do you recall, sir, that after making your deal with the
8 prosecutors in this case, you reached an agreement with the SEC
9 based on a separate case they filed against you?

10 A. Yes, I did.

11 Q. Do you recall, sir, that the deal you were prepared to
12 agree to did not allow you to contest the validity of any of
13 the allegations, except the allegations related to Shelter
14 Golf?

15 A. I think that's my recollection, yes.

16 Q. That was the deal you insisted upon, correct?

17 A. Yes.

18 Q. Sir, do you recall that on May 11, 2016, you signed your
19 deal with the prosecutors?

20 A. Yes, I recall.

21 Q. You recall you went over your cooperation agreement that
22 had all sorts of potential financial implications as well such
23 as requirements to pay taxes and potentially fines and other
24 things in that agreement?

25 A. Yes.

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Davis - cross

1 Q. Isn't it true, sir, that the same day you signed your
2 agreement, you made plans to go on a gambling junket to Las
3 Vegas?

4 A. Yes, for my birthday.

5 Q. Sir, isn't it a fact that you then went and you wired
6 \$50,000 from your bank account to use there while gambling?

7 A. Yes, I did.

8 Q. Is it fair, sir, that on that trip, your average bet was
9 around \$4,000 and you gambled until 3 in the morning?

10 A. I don't recall that. I don't recall the details of the
11 trip. But my wife was with me and two other couples went with
12 us. It was for my birthday, and I had been under a lot of
13 pressure, and we had a good time.

14 Q. Sir, do you recall your average bet was \$4,000?

15 A. I don't recall precisely what it was, no, sir.

16 Q. Did you tell the prosecutors you were going on this trip to
17 Las Vegas and spending \$50,000 after signing your agreement?

18 A. I don't recall ever telling them, no.

19 Q. Sir, do you recall, in addition to that, while you were
20 well into your proffer sessions or cooperation, making a
21 significant trip to travel to Punta Mita in Mexico?

22 A. Yes, it was a family vacation that we had planned before I
23 even started interviewing with the prosecutors.

24 Q. Do you recall, sir, that you finalized the plans in
25 March 17, 2016, when you are in the midst of this, and

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Davis - cross

1 committed to spending over \$18,000 for this trip? Do you
2 recall that sir?

3 MS. CUCINELLA: I'm going to object to this line of
4 questioning. We seem to be so far afield at this point that we
5 object.

6 THE COURT: I'll give Mr. Berke a little bit of
7 latitude. Keep it moving, Mr. Berke.

8 MR. BERKE: Yes, your Honor.

9 Q. Do you need the question again, sir?

10 A. I'm sorry. Can you repeat the question?

11 Q. Do you recall, sir, on March 17 while you were in the midst
12 of trying to get your deal with the prosecutors, you made final
13 reservations to go to Punta Mita, Mexico, and committed to
14 spending \$18,000?

15 A. I recall that I rented a house that I committed to earlier
16 in the year before I started the proffer agreement, the proffer
17 process. And I made a final payment I believe in March. I
18 rented a house and took my entire family and my grandkids.

19 Q. After that trip -- the prosecutors agreed you could go to
20 Mexico, right, sir?

21 A. Yes, they did.

22 Q. Did you tell them at the time you were spending \$18,000 on
23 a trip?

24 A. I don't think they asked me, no.

25 Q. Sir, you have said that you and Mr. Walters are very

H3n3wal5

Davis - cross

1 different people, isn't that correct? Isn't that one of the
2 things you told the prosecutors?

3 A. I don't recall that, counselor.

4 Q. Let me show you what's been marked as -- well, let me ask
5 you. You grew up under very different circumstance, correct?

6 A. I believe that to be accurate, yes.

7 Q. You visited with Bill and Susan Walters, correct?

8 A. I have in the past, yes.

9 Q. You know he's been married to Susan Walters for 40 years,
10 correct?

11 A. Yes.

12 Q. Mr. Walters really doesn't drink, correct?

13 A. I'm sorry?

14 Q. Mr. Walters doesn't drink hardly at all?

15 A. I am aware of that, yes.

16 Q. You are a big drinker, correct, sir?

17 A. I wouldn't characterize my drinking as being a big drinker,
18 no.

19 Q. You had a drinking problem in your past, correct, sir?

20 A. I'm not sure that's accurate either.

21 Q. Did you tell the prosecutors that you did?

22 A. I told the prosecutors that I had been under a lot of
23 pressure, and my health was poor, and which led to the health
24 problems that I had in the fall of 2015. And I think some of
25 that was brought up by excessive use of alcohol, yes.

H3n3wal5

Davis - cross

1 Q. You know, sir, that Mr. Walters -- withdrawn.

2 You knew that Mr. Walters had a lot of respect for
3 some people that you were friends with, correct?

4 A. Had a lot of respect for whom?

5 Q. For people who you were friends with at a time, isn't that
6 true, sir?

7 A. I'm not sure I knew what Mr. Walters thought, but he had --
8 we had some mutual friends. I would characterize it that way.

9 Q. For example, Bill Saxon. That was someone who at the time
10 you were very friendly with, correct?

11 A. Yes.

12 Q. You were aware that Mr. Walters has expressed he had a lot
13 of respect and admiration for Mr. Saxon, correct?

14 A. Yes, I think that was the case.

15 Q. You knew that Mr. Walters at times was interested in your
16 viewpoint about financial matters and Wall Street when he had
17 transactions that could be relevant to that, isn't that true,
18 sir?

19 A. He -- I think we've already -- I've already testified and
20 it's already been demonstrated that he showed me some business
21 transactions that I tried to give him advice on.

22 Q. But you thought that was sincere, that he was interested in
23 your input and advice, correct?

24 A. Yes.

25 Q. I want to ask you about some of your testimony on direct

H3n3wal5

Davis - cross

1 about the time you went to Mr. Walters to ask him for a loan.

2 Do you recall that, sir?

3 A. Which time?

4 Q. Well, sir, do you recall testifying that there was a time
5 in 2010 that you went to Mr. Walters and you visited him in Las
6 Vegas and you asked him for a loan? Do you recall that, sir?

7 A. Yes.

8 Q. Do you recall, sir, you told Mr. Walters that because of
9 all of the things you described, in terms of where your money
10 was, that while you had wealth, you didn't have liquidity,
11 correct?

12 A. I think that's accurate, yes.

13 Q. You also explained to him about the divorce, and that had
14 taken half of your liquid assets, at least at the time,
15 correct?

16 A. Yes, I think that's accurate.

17 Q. You told him that you thought he would better understand
18 that you had the financial wherewithal, and it would be less
19 hassle and easier to do than going to a bank?

20 A. I don't recall saying that specifically.

21 Q. But you recall, sir, explaining to him what your assets
22 were and why you were of substance and would be able to pay him
23 back?

24 A. Yes, I think I had some -- some -- gave him some
25 background.

H3n3wal5

Davis - cross

1 Q. Sir, let me ask you. So when you flew out to meet with
2 Mr. Walters, you had met him at his golf course Bali Hai, he
3 owns that in Las Vegas, correct?

4 A. Yes.

5 Q. It has a big dining area and he has an office there that he
6 works out of, correct?

7 A. Yes.

8 Q. You met in his office to have these discussions, correct?

9 A. No, actually we met in the dining room.

10 Q. The dining room, you had lunch. Did you go in his office
11 at all?

12 A. I'm sorry?

13 Q. Did you go in his office at all?

14 A. I didn't hear you. Pardon me.

15 Q. I asked did you go in his office at all?

16 A. Not that I recall on that trip. I think we sat in the
17 dining room the entire time.

18 Q. You had lunch there, correct?

19 A. Yes.

20 Q. You explained why you needed the loan?

21 A. Yes.

22 Q. Sir, you knew, did you not, that Mr. Walters in gambling on
23 sports in Las Vegas, that he needed to use cash because in Las
24 Vegas to gamble on sports you need to use cash. Did you know
25 that at the time, sir?

H3n3wal5

Davis - cross

1 A. I don't recall him telling me that, but I would certainly
2 assume that.

3 Q. I think you already said at this time that Mr. Walters at
4 that time was a very large and active sports gambler, correct?

5 A. Yes.

6 Q. Mr. Walters didn't in any time suggest that he would go
7 into a safe and just give you cash, did he?

8 A. No.

9 Q. There was never any suggestion at any time of Mr. Walters
10 giving you any of his cash, was there?

11 A. No.

12 Q. You talked about Mr. Walters ultimately telling you that he
13 would put you in touch with a friend of his who was in the
14 loaning business with his money, Luther James, correct?

15 A. Yes.

16 Q. And we've already gone through it. You signed agreements
17 with Luther James, correct?

18 THE COURT: I think we've covered this, Mr. Berke.

19 MR. BERKE: Yes.

20 Q. Sir, what I want to ask you is, you recall you had said you
21 made interest payments for close to a year and you don't recall
22 him ever following up.

23 THE COURT: Haven't you already covered this on
24 cross-examination, sir?

25 MR. BERKE: I have not, your Honor.

H3n3wal5

Davis - cross

1 THE COURT: I'll accept your representation. Go
2 ahead.

3 A. I'm sorry. What was the question?

4 Q. Do you recall you were asked on direct if you recalled
5 Mr. James ever following up with you about when you fell behind
6 in what you owed in monthly payments in terms of interest?

7 A. Yes, I didn't recall him following up.

8 Q. Do you recall at some point when you hadn't paid the loan
9 in full, that you did a note extension with Luther James? Do
10 you recall that, sir?

11 A. Yes, I think that's accurate.

12 Q. You signed, and again you signed a note extension, an
13 actual document, correct?

14 A. I think that's correct, yes.

15 Q. Do you recall, sir, that when you were falling behind in
16 your statements, at some point Mike Luce asked you to send him
17 a financial, an updated financial statement?

18 A. Yes, I think I recall that.

19 Q. You recall that in January of 2012, you told Mr. Luce that
20 you would like to take care of this and take care of the loan?
21 Do you recall that, sir?

22 A. Yes, I do.

23 Q. Do you recall, sir, when you fell behind, do you recall,
24 sir, having calls from Luther James' office?

25 A. I don't recall that, but it could have happened.

H3n3wal5

Davis - cross

1 Q. You recall that Luther James was in -- do you recall that
2 he was in a 502 area code, sir? Do you recall that?

3 A. I don't know what his phone number was.

4 Q. Let me show you what's marked into evidence as -- let me
5 show you marked for identification DX 5439. Do you recall, sir
6 he was in a 502 area code?

7 THE COURT: Do you recall he was in a 502 area code?
8 Stop looking at the screen. The question is whether you recall
9 he was in a 502 area code.

10 THE WITNESS: I did not recall that, no.

11 THE COURT: Next question.

12 Q. Do you recall at some point when you fell behind being told
13 that Mr. James no longer was interested in having you as a
14 lender? Do you recall that?

15 A. No. I don't recall that.

16 Q. Well, you recall hearing from Mike Luce that Mr. James was
17 concerned you fell behind but that Bill Walters had agreed to
18 take over the loan?

19 MS. CUCINELLA: Objection, hearsay.

20 MR. BERKE: It goes to his state of mind, your Honor.

21 THE COURT: I'll allow it not for the truth of its
22 content. Go ahead.

23 A. Could you repeat the question, please?

24 Q. Do you recall that you were told that you were falling
25 behind, and that Mike Luce said that The Walters Group had

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Davis - cross

1 agreed to take over the loan?

2 A. I recall getting an e-mail from Mike Luce that said they'd
3 taken over the loan, yes.

4 Q. But you recall that was when you fell behind with Luther
5 James? Do you recall that, sir?

6 A. Yes, I think that's accurate.

7 Q. You recall we talked about you had to sign a new note, but
8 that was at 2 percent -- I'm sorry, at prime plus 2 percent
9 instead of the old prime plus one and a half, correct?

10 A. Yes.

11 Q. It was in the context of The Walters Group contemplating
12 that agreement that you had to provide your financial
13 statement, isn't that true?

14 A. I don't recall that. No.

15 Q. Do you recall, sir, that it was in January where you were
16 asked to provide updated financials in connection with the
17 loan?

18 A. I don't recall that.

19 Q. Let me show you what's marked as Defense Exhibit 1539 for
20 identification. Is that an e-mail from Mike Luce to you
21 regarding the loan?

22 A. Yes, it is.

23 Q. Dated January 3, 2012, correct?

24 A. Yes.

25 MR. BERKE: Your Honor, I would offer Defense Exhibit

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Davis - cross

1 1539.

2 THE COURT: Any objection?

3 MS. CUCINELLA: No objection.

4 THE COURT: Received.

5 (Defendant's Exhibit 1539 received in evidence)

6 MR. BERKE: Sir, may I publish -- I will publish it,
7 Mr. McLeod. Thank you. If we can go to the bottom.

8 Q. Sir, you're saying you're going to send an updated
9 financial statement, correct?

10 A. Yes.

11 Q. And then if you go to the next. Well, okay. That's okay.

12 Now let me show you a document marked for
13 identification as 1537. Defense Exhibit 1537. And that is an
14 e-mail from you to Mike Luce, correct? January 12, 2012?

15 A. Yes.

16 MR. BERKE: Your Honor, I'd offer Defense Exhibit
17 1537.

18 THE COURT: Any objection?

19 MS. CUCINELLA: No objection.

20 THE COURT: Received.

21 (Defendant's Exhibit 1537 received in evidence)

22 MR. BERKE: Mr. McLeod, if we may publish.

23 Q. You see if you look at the bottom, sir, you see where
24 you're saying to Mr. Luce on January 12 "I certainly haven't
25 forgotten about you. I have been trying to move my loan. I

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Davis - cross

1 will get you my updated financial shortly."

2 Sir, what that reflects, doesn't it, is you understood
3 you, to move your loan from Luther James, Mr. Walters' group
4 said they would be willing to take it, but they want your
5 financial statements to review.

6 Isn't that what that means, sir?

7 A. I told him I was going to try to get him an updated
8 financial, yes.

9 Q. Then if you, just one more, go to Defense Exhibit 1538.
10 And again, this is another e-mail from you to Mike Luce the
11 following day, January 13, correct?

12 A. Yes.

13 MR. BERKE: Your Honor, I would offer into evidence
14 Defense Exhibit 1538.

15 MS. CUCINELLA: Your Honor, the bottom e-mail from
16 Mr. Davis we have no objection to.

17 THE COURT: Okay.

18 MR. BERKE: That's fine, I'll offer just that.

19 THE COURT: It's received.

20 (Defendant's Exhibit 1538 received in evidence)

21 MR. BERKE: If we can just show the bottom.

22 Q. Mr. Davis, will you read that e-mail that you wrote to Mike
23 Luce on January 13?

24 THE COURT: The jury has it on the screen. They can
25 read it. It's in evidence.

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Davis - cross

1 MR. BERKE: Thank you.

2 THE COURT: Next question.

3 Q. When you say "Obviously I want to take care of this for my
4 benefit and to clean this up for BW," BW is Bill Walters,
5 right?

6 A. Yes.

7 Q. You understood this loan was an issue now, and you were
8 trying to figure out the best way to clean it up, correct?

9 A. It was an issue for me and him, yes.

10 Q. Ultimately, we've seen documents, you've signed a new
11 agreement, correct?

12 A. Yes, I did.

13 Q. While that agreement was outstanding, we saw -- you believe
14 you indicated you received regular documentation from -- or you
15 testified to regular documentation from the accounting firm
16 that certified that the debt was outstanding and it was a good
17 debt, correct?

18 A. Yes, that's correct.

19 Q. And you would sign those and send those in, correct?

20 A. I did, yes.

21 Q. Sir, do you recall you testified on direct that you do not
22 recall Mr. Walters or Mike Luce asking you about repaying the
23 loan? Do you recall that, sir?

24 MS. CUCINELLA: Objection, that misstates the
25 defendant's prior testimony.

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Davis - cross

1 THE COURT: Do you have the testimony, Mr. Berke?

2 MR. BERKE: Your Honor, I will go to the documents.

3 That's fine.

4 Q. Let me show you a document marked Defense Exhibit 1540.

5 This e-mail exchange between you and Mike Luce dated "update."

6 THE COURT: You're asking him whether it's an update?

7 What's your question? What's your question, Mr. Berke?

8 Q. This is an e-mail on the bottom from you to Mr. Luce,

9 correct?

10 A. Yes.

11 Q. And the top one, correct?

12 A. Yes.

13 MR. BERKE: Your Honor, I would offer Defense Exhibit
14 1540 into evidence.

15 THE COURT: Any objection?

16 MS. CUCINELLA: Only the e-mail, I believe it is the
17 middle e-mail from Mr. Davis.

18 MR. BERKE: The two e-mails on the bottom from
19 Mr. Luce and Mr. Davis, I'll offer that, and not the top
20 e-mail, your Honor.

21 THE COURT: Any objection?

22 MS. CUCINELLA: No, I think there is a government
23 exhibit on this, so no.

24 THE COURT: Received.

25 (Defendant's Exhibit 1540 received in evidence)

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Davis - cross

1 THE COURT: Ladies and gentlemen, you'll have all the
2 exhibits that have been received into evidence in the jury room
3 at the time of deliberations.

4 Q. I show you Defense Exhibit 107. This e-mail is between you
5 and Mike Luce from June 2012, correct?

6 A. Yes.

7 MR. BERKE: Your Honor, I'd offer Defense Exhibit 107.

8 THE COURT: Any objection?

9 MS. CUCINELLA: No objection.

10 THE COURT: Received.

11 (Defendant's Exhibit 107 received in evidence)

12 Q. Sir, you see on the bottom that Mr. Luce says to you "Can
13 you give me an update on anything that may happen, including
14 the bank and potential cash for note reduction." Do you see
15 that, sir?

16 A. Yes, I do.

17 Q. You understand that "note reduction," that was paying down
18 your loan, correct?

19 A. Yes.

20 Q. Sir, you recall that this loan did not require periodic
21 payments that you had with Mr. Walters, but simply that you pay
22 it off in full by a certain date? Do you recall that?

23 MS. CUCINELLA: Objection. If Mr. Berke could
24 clarify, I believe there were multiple loans outstanding at
25 this point, so just clarify what you're referring to.

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Davis - cross

1 Q. The loan we're talking about that Mr. Walters agreed to
2 take over that you previously had with Luther James.

3 A. What was the question?

4 Q. Do you recall that this loan, unlike the Luther James loan,
5 did not require monthly interest payments?

6 A. I think that's correct, yes.

7 Q. It required simply at the end of the loan to pay the
8 principal and any interest that accrued?

9 A. Yes.

10 Q. Sir, I want to ask you about Periscope. To be clear, you
11 were on the board of Periscope, correct?

12 A. Yes, I was.

13 Q. Am I right, sir, that when you went to Mr. Walters with
14 this opportunity, you had indicated you thought this was a very
15 good opportunity, correct?

16 A. Yes.

17 Q. Am I right that still, Mr. Walters and Mr. Luce required
18 you to send them a lot of information about it to evaluate
19 whether they thought this was an investment for them to do?

20 A. I know I sent Mr. Luce a long e-mail which I think is
21 already in evidence.

22 Q. We saw actually a number of e-mails, do you recall -- yes.

23 You explained to Mr. Walters and Mr. Luce why you
24 thought that for a \$300,000 investment it would immediately be
25 worth a multiple of that, correct?

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Davis - cross

1 A. Yes, I think I did.

2 Q. You recall, sir, that you would provide periodic updates
3 about Periscope to both Mr. Walters and Mr. Luce about what was
4 going on for any significant developments from Periscope? Do
5 you recall that, sir?

6 A. Yes, I think I did.

7 Q. That included things that happened at board minutes or
8 significant business developments with regard to Periscope,
9 correct?

10 A. Yes.

11 Q. Periscope was successful, is that right, sir?

12 A. Yes, it was.

13 Q. Do you recall, sir, when it appeared that Periscope was
14 going to be successful, having discussions starting in --
15 starting fairly early on about using the proceeds from
16 Periscope to pay down the note that you had for Mr. Walters
17 that he had taken over from Mr. James?

18 MS. CUCINELLA: Objection. The "fairly early on" is
19 an incredibly unclear period of time.

20 THE COURT: Do you understand the question, Mr. Davis?

21 THE WITNESS: Yes, sir, I do.

22 THE COURT: Then you can answer it.

23 A. I had some communication with Mike Luce, as I recall, about
24 allocating a portion of my distributions that I was going to
25 receive from Periscope to reduce the note.

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Davis - cross

1 Q. Sir, I want to clarify one point. Periscope was a private
2 company, correct?

3 A. Yes, it was.

4 Q. So it didn't trade on any market or anything like that,
5 correct?

6 A. Correct.

7 Q. So it was perfectly fine for you to discuss Periscope with
8 Mike Luce and Bill Walters?

9 A. Absolutely.

10 Q. Sir, if I could show you what's been marked for
11 identification 1516, DX. So this is e-mail exchanges between
12 you and Mike Luce?

13 A. Yes.

14 MR. BERKE: Your Honor, I'd offer Defense Exhibit 1516
15 for identification.

16 THE COURT: Any objection?

17 MS. CUCINELLA: No.

18 THE COURT: Received.

19 (Defendant's Exhibit 1516 received in evidence)

20 MR. BERKE: If we can start at the bottom and scroll
21 up.

22 Q. You understood the renewal on your note, again, is the loan
23 we've been talking about, correct?

24 A. Yes.

25 Q. And check on Periscope and the bank, that was the bank

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Davis - cross

1 renewal transaction you talked about on direct, right?

2 A. It's the bank recap transaction.

3 Q. If we go to the next e-mail above it. And then to the top.

4 Sir, do you recall that if I can show you what's
5 marked as Defense Exhibit 4987. Actually if I can show you,
6 excuse me, 4986.

7 Sir, this is e-mail exchanges between you and Mike
8 Luce with regard to Periscope in June of 2014?

9 A. Yes, I recall this.

10 MR. BERKE: Your Honor, I'd offer Defense Exhibit
11 4986.

12 THE COURT: Any objection?

13 MR. GOLDMAN: One minute.

14 MS. CUCINELLA: No objection.

15 THE COURT: Received.

16 (Defendant's Exhibit 4986 received in evidence)

17 Q. Sir, do you see, if you go down a little bit lower, please.
18 I'm sorry, a little bit higher.

19 You see there's an e-mail that was sent to Mike Luce
20 and forwarded to you, and on the bottom it says "We received
21 this income from Periscope. The back of the check is signed
22 over to the TWG. Please let me know if you're okay with us
23 depositing this way."

24 Did you understand TWG was The Walters Group?

25 A. Yes.

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Davis - cross

1 Q. Now if we can go to the top one. Do you recall Mike Luce
2 asked you -- wanted to know what portion -- "I need to
3 understand what portion of the proceeds was The Walters Group
4 and what portion was yours because it was going to be applied
5 to the note." Do you recall that?

6 A. Yes, I do.

7 Q. This refers to the 80-20 split that you testified, right?

8 A. Yes, I think it does.

9 Q. You had an understanding by this time that the 20 percent
10 was going to be applied to pay down the note we've been talking
11 about, correct?

12 A. I think at this point in time we did not have that
13 understanding. I think this brings that into question, because
14 he's asking me a question "we'll apply the amount to your
15 portion of the note."

16 Q. No question, sir, you understand that that means I'll apply
17 that amount to your note, that referred to the loan we've been
18 talking about, correct?

19 A. Yes, of course, yes.

20 Q. That's ultimately what happened, right?

21 A. I believe that's the case, yes.

22 Q. Let me show you what has been marked as Defense Exhibit
23 597. These are e-mails between you and Mike Luce again on the
24 same topic, correct? Periscope.

25 A. This is in January of 2016.

H3n3wal5

Davis - cross

1 Q. Yes.

2 A. Yes.

3 Q. Okay. You see where it says "I'm mailing a check today for
4 62,000 --"

5 THE COURT: It's not in evidence.

6 MR. BERKE: I'm sorry, your Honor. I would offer into
7 evidence, Defense Exhibit 597.

8 THE COURT: Any objection?

9 MS. CUCINELLA: May I have one moment, your Honor?

10 THE COURT: Yes.

11 MS. CUCINELLA: Your Honor, may we have a brief
12 sidebar?

13 THE COURT: No. Do you have an objection?

14 MS. CUCINELLA: We have an objection simply based on
15 the period of time based on an issue that defense counsel
16 raised yesterday regarding this particular month and year and
17 the communications and the status of the communications.

18 MR. BERKE: Your Honor, I'm happy to put it off to the
19 side for now.

20 THE COURT: Fine.

21 MR. BERKE: We'll deal with it later. Thank you.

22 Q. Sir, isn't it a fact that on the Periscope transaction, you
23 actually used part of the Periscope proceeds that were supposed
24 to go to The Walters Group for your own personal expenses?
25 Isn't that true, sir?

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Davis - cross

1 A. Yes, and I told Mike Luce I was going to do that. I
2 actually took some of the funds and paid down credit card debt
3 and I also allocated approximately \$80,000 from my share of
4 income taxes on the Periscope deal, and I told Mike Luce all of
5 that, and he told me he was going to take care of that relative
6 to my note balance. So whatever I used --

7 THE COURT: Keep going.

8 A. My understanding with Mr. Luce was whatever funds I used
9 for my personal benefit for taxes and/or anything else, he was
10 going to debit to my note balance.

11 Q. Let me ask you about that. So I want to divide it up.
12 This investment, I believe you testified on direct, was made
13 through a partnership, wasn't it?

14 A. Yes, it was.

15 Q. The partnership had certain tax expenses, correct?

16 A. We had auditing expenses every year, we had Texas franchise
17 tax expenses, which were not insubstantial.

18 Q. You told Mike Luce that any expenses related to the
19 partnership would come out before there were distributions,
20 correct?

21 A. I believe I did that, yes.

22 Q. What you didn't tell him is that you were also going to use
23 it to pay your own personal debt and expenses, having nothing
24 to do with the partnership. Isn't that true, sir?

25 A. No, that's not correct. I absolutely did tell him that.

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Davis - cross

1 Q. Let me show you what has been marked Defense Exhibit 608
2 for identification. Again, this is an e-mail between you and
3 Mike Luce?

4 A. Yes.

5 Q. If we can scroll down as well.

6 MR. BERKE: I would offer Defense Exhibit 608 into
7 evidence.

8 THE COURT: Any objection?

9 MS. CUCINELLA: No objection.

10 THE COURT: Received.

11 (Defendant's Exhibit 608 received in evidence)

12 MR. BERKE: Your Honor, if I can just have one moment.

13 THE COURT: You may.

14 MR. BERKE: Thank you.

15 THE COURT: Ladies and gentlemen, why don't you stand
16 up and stretch.

17 Go ahead, Mr. Berke.

18 MR. BERKE: Thank you, your Honor.

19 Q. Do you see where you say in Defense Exhibit 608 on
20 November 2014, that you have not taken any money out of the
21 distributions, so you hope you will credit me for 20 percent of
22 the distributions on my loan balance.

23 Do you see where you say that, sir?

24 A. Yeah, I think that's accurate as of the date of this
25 e-mail, yes.

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Davis - cross

1 Q. Isn't it a fact, sir, that three days prior you had written
2 a check \$10,000 for your personal expenses to Bank of America?

3 A. I don't recall the date of that.

4 Q. Let me show you what's marked as Government Exhibit 1708-A
5 in evidence. I'm sorry. You see, sir?

6 A. Yes.

7 Q. Three days prior --

8 A. Yes.

9 Q. That's \$10,000?

10 A. Yes.

11 Q. And you remember what you wrote to Mr. Luce on the 13th,
12 that you've not taken any money out of the distributions?

13 A. Yes.

14 Q. You recall, sir, that this check is for you and your
15 personal expenses?

16 A. Yes, that's correct.

17 Q. You recall, sir, that the day after you wrote this e-mail
18 to Mr. Luce that you had not taken any money out of the
19 distributions, you wrote a \$40,000 check to your own personal
20 checking account?

21 A. Yes, I recall that.

22 Q. You recall, sir, that there were multiple payments to
23 yourself totaling \$126,161.69?

24 A. Over a period of time. I think that's accurate, yes.

25 Q. Those were your personal expenses, correct?

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Davis - cross

1 A. They were, some were for my personal expenses and I think
2 some were -- I was reserving some money for taxes as well.

3 Q. Well, sir, isn't it right that you had a capital -- you had
4 a tax obligation of \$79,000 for capital gains, isn't that true,
5 sir?

6 A. Yes.

7 Q. But in addition to that, there was 126,000 and change that
8 you paid to yourself, isn't that right, sir?

9 A. I think that's totally accurate, and I discussed it with
10 Mike Luce over the phone prior to doing it.

11 Q. So your testimony is, notwithstanding your statement in
12 response to his question in November whether these were all
13 payments in your statement that you haven't taken any money
14 out, that he knew that was an untrue statement because you had
15 already taken the 10,000, and were going to take another 40,000
16 out? Is that your testimony, sir?

17 A. I'm telling you I had this conversation with Mike Luce, and
18 I told him we were going to have further distributions and I
19 would square up the account with the further distributions.

20 (Continued on next page)

21
22
23
24
25

H3ndwal6

Davis - cross

1 Q. Could I pull up again 202 -- 608, so I can show the
2 question that Mike Luce asked you?

3 A. Yes.

4 Q. On the bottom.

5 Do you see the question, Mike Luce asked, Is this
6 Walters' share or do we need to apply the 20 percent? And it
7 was to that that you answered, I have not taken any money out
8 of the distributions, so credit me for the 20 percent.

9 A. Yes.

10 Q. At that time, sir, you had taken out money, and then you
11 ultimately, before sending more money to the Walters Group, you
12 took out even more money from Periscope, didn't you, sir?

13 A. I did. And I'm telling you I had a phone conversation with
14 Mike Luce about this. So we had complete clarity on what I was
15 doing.

16 Q. You would agree with me, sir --

17 A. I hadn't finished my answer.

18 Q. Please do.

19 A. If I was trying to hide this, I certainly wouldn't have
20 written a check on Periscope checks. There was an easier way
21 to hide this, and I wasn't trying to hide anything. They had
22 complete and total access to all the Periscope accounts.

23 Q. Sir, you will agree with me, the Shelter Golf checks were
24 written on the Shelter Golf account statements to you
25 personally, correct?

H3ndwal6

Davis - cross

1 A. Yes.

2 Q. And you recall, sir, that the SEC had a lot of questions
3 for you about the monies you had taken out of Periscope and
4 asked you about that in your testimony, and then asked you
5 about it -- asked you to submit an accounting explaining the
6 monies and withdrawals you made; do you recall that, sir?

7 A. Yes. And I think I submitted a complete accounting for it.

8 Q. And you indicated those monies were taken out for your own
9 personal use, correct?

10 A. I didn't try to hide it, no.

11 Q. Well, they had already found out about it. They knew about
12 it. They had the checks, and they asked about it in your
13 testimony; isn't that true, sir?

14 A. I didn't hide it, either.

15 Q. Sir, do you recall that you gave the accounting after you
16 were given testimony where they specifically asked you about
17 the distributions from Periscope to your personal checking
18 account? Do you recall that, sir?

19 A. They wanted a complete accounting about it and we gave it
20 to them, but I certainly didn't try to hide in my testimony
21 either.

22 Q. Sir, do you recall being told in your testimony by the SEC
23 that they're going to -- on the record during your testimony,
24 that they are going to ask you to provide an accounting of
25 Periscope and the bank account because they wanted to come

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Davis - cross

1 up -- they could only come up with a certain amount and they
2 wanted an accounting of what you got out of that? Do you
3 recall that, sir?

4 A. Yes.

5 Q. And you said, in the SEC, you'll give them a complete
6 account. Do you recall that, sir?

7 A. Yes. I think that's correct.

8 Q. And you recall, sir, after you were asked about the
9 finances of Periscope and asked to give an accounting, only
10 then did you make another \$50,000 check to the Walters Group
11 from Periscope Preferred; do you recall that, sir?

12 A. I remember the timing of it, yes.

13 Q. And this is all during a time, sir, that you allege,
14 correct, that you were in this so-called conspiracy with
15 Mr. Walters? It is the same time period, correct, sir?

16 A. I'm sorry. What timeframe are you referring to, counselor?

17 Q. The time period when you wrote these checks to yourself,
18 sir. Do you recall that?

19 A. This is 2014?

20 Q. Yes.

21 A. And 2015?

22 Q. No. 2014, sir. You are alleging that you had entered --
23 that you had been in this conspiracy with Mr. Walters, correct?

24 A. Yes.

25 Q. Had been for years?

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Davis - cross

1 A. Yes.

2 Q. There was another investment, Park Cities Bank, correct?

3 A. Yes.

4 Q. And, again, you provided this to Mr. Walters and the
5 Walters Group and Mike Luce, telling them this was a great
6 opportunity, a great investment, correct?

7 A. Yes, I did.

8 Q. And you actually went to a lot of people you know
9 throughout Dallas in pitching the deal and explaining why this
10 was such a good opportunity if you could finance this and
11 recapitalize this bank in Texas, correct?

12 A. I went to a lot of people all over the United States. I
13 worked on it for approximately a year and traveled all over the
14 United States trying to raise this money.

15 Q. And there are a ton of documents that reflect showing you
16 meeting with them pitching a lot people who you knew from
17 business and the community in Dallas, correct?

18 A. Yes.

19 Q. And you were working on this with a gentleman by the name
20 of Roy Salley, is that right?

21 A. Yes. He was the community banker who was actually going to
22 run the Park Cities Bank if we were successful.

23 Q. And in addition to talking to Mr. Walters about a line of
24 credit, which you talked to him about, which you talked about
25 in your direct testimony, you were also talking about making an

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Davis - cross

1 investment?

2 A. Yes. I did.

3 Q. OK. And am I right, sir, that what you were trying to do
4 and you -- and you had some partners in this, correct?

5 A. Partners in what?

6 Q. People who were working with you to try to raise the
7 capital for the recapitalization.

8 A. We had an investment banking firm in Dallas that was
9 assisting us, yes.

10 Q. And, also, you had in addition to -- there was Roy Salley
11 working with you, correct?

12 A. Yes.

13 Q. And the other individuals raising -- working with you to
14 raise money?

15 A. Yes. It was a firm in Dallas called Commerce Street
16 Capital.

17 Q. Who was the individual from Commerce Street Capital, sir?

18 A. There were two or three gentlemen that were working on it
19 with us.

20 Q. And you -- and when you told Mr. Walters that this was --
21 and when you told Mr. Walters and Mike Luce that this was a
22 good deal, you believed it?

23 A. It was a good deal, too. I was right.

24 Q. And Mr. Walters and Mr. Luce, again, wanted to do a lot of
25 due diligence before they decided whether or not to do this

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Davis - cross

1 deal, correct?

2 A. I don't recall those conversations but I would expect them
3 to do that, yes.

4 Q. Well, you recall they asked you for documents and
5 information and a lot of emails back and forth in that regard?

6 A. I think that's true.

7 Q. And they were trying to decide whether or not to invest
8 their money, correct?

9 A. I think they were trying to decide whether or not they
10 wanted to make a commitment. Initially it was going to take
11 quite a while to get the bank deal closed, so there was no
12 cutoff point that I recall pressing them for a decision on
13 this.

14 Q. Right. Could I be clear? So what you were trying to do is
15 get commitments or soft circles of this to people to say if you
16 get approved for this recapitalization, they will put up a
17 certain amount of money, correct?

18 A. Yes. I think that's accurate, yes.

19 Q. And during this process you were getting those, at times
20 you had over 50 million or 60 million towards your goal,
21 correct?

22 A. That's accurate, yes.

23 Q. And in addition to that, you had told Mr. Walters that this
24 was a good deal but you were spending a lot of your time on it
25 because it required so much time to both line up the business

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Davis - cross

1 side of the recapitalization as well as raising the capital?

2 A. Yes, I think that's accurate.

3 Q. And you were spending a lot of your time doing it, correct?

4 A. Yes.

5 Q. And you told Mr. Walters that you were looking for a line
6 of credit so you could use those monies to pay the expenses
7 related solely to the bank recapitalization, correct?

8 A. Yes. I didn't say "solely" to the bank recapitalization.

9 I think -- I've already testified about this, counselor, and I
10 think I went to him and said I want a line of credit and I need
11 it for some working capital, including expenses I'm going to
12 incur with regard to raising this bank money.

13 Q. Sir, you indicated that the line of credit was for the
14 business transaction of the bank recapitalization, didn't you,
15 sir?

16 A. I'll try this one more time. I indicated to him I needed
17 some working capital, and specifically a line of credit, that I
18 needed to draw down on.

19 Q. For the Park Cities work, correct?

20 A. Primarily, yes. I think that's accurate.

21 Q. No. I want to ask you about primarily, sir.

22 Isn't it a fact that you told him you needed the money
23 to pay for your involvement with Park Cities Bank?

24 A. I don't recall that.

25 Q. Do you recall, sir, when you met with the prosecutors in

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Davis - cross

1 March 31, 2016, you told them that you went to Mr. Walters and
2 you told them that you needed the money to pay for your
3 involvement with Park Cities Bank?

4 A. Well, I'm going to restate what I thought to be the case,
5 which is I needed working capital that I was going to use to
6 help me raise this money for the bank.

7 Q. So you did tell them that this was a line of credit to be
8 used for the work on the bank, correct, sir?

9 A. I don't know how I can say this any differently than I've
10 already said it.

11 Q. Well, what I will say, sir, is you went to Mr. Walters and
12 said this is for a business transaction that I told you about,
13 the Park Cities deal, correct?

14 A. I went to Mr. Walters and I told him I needed a line of
15 credit for working capital and that I was going to spend a lot
16 of time, probably a year or so, raising money for this
17 recapitalization of this bank. That's what I told him.

18 Q. And you told him you were going to use the line of credit
19 to pay for the expenses incurred in connection with that work,
20 correct?

21 A. And some of that money would be for the expenses, yes. It
22 would also pay for my time for a year.

23 Q. But you lied to him, didn't you, because that wasn't in
24 your plan at all? You lied to him?

25 A. I don't think I was totally honest with him, that's

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Davis - cross

1 correct.

2 Q. You weren't totally honest because you were already getting
3 the expenses paid -- a lot of the expenses paid by the
4 investment bank, weren't you, sir?

5 A. They weren't paying me anything, no --

6 Q. No --

7 A. Wait a minute. Let me finish my answer.

8 Q. Please do.

9 A. They weren't paying me a cent. They were merely
10 reimbursing me for out-of-pocket expenses. So they were not
11 compensating me for any of my work for a year.

12 Q. I'm not talking about you, sir. I'm talking about your
13 expenses. You were having your expenses in connection with
14 Park Cities paid for by the investment bank, correct?

15 A. I had some of my expenses, not all of them, yes. That's
16 accurate.

17 Q. And you led Mr. Walters and Mr. Luce to believe that you
18 were going to use this money in connection with expenses to
19 make this recapitalization happen; isn't that true, sir?

20 A. I think that's accurate, yes.

21 Q. When in fact your plan at the time was to use the money to
22 pay down various debts and expenses that were personal to you
23 and had nothing to do with the Park Cities work; isn't that
24 true, sir?

25 A. I ended up using the money for various things, yes.

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Davis - cross

1 Q. And, sir, in terms of -- do you recall when you got this
2 line of credit?

3 A. It was in November.

4 Q. Of 2011, correct, sir?

5 A. Yes, that's correct.

6 Q. And, again, sir, stepping back, this is the time period
7 when you testified on direct that you were giving allegedly all
8 this illegal information to Mr. Walters so he could make these
9 big investments in Dean Foods and make a lot of money; that's
10 your testimony, right, sir? That's the same time period,
11 correct?

12 A. It's certainly a small portion of the time period I gave
13 him inside information, yes.

14 Q. And you never told Mr. Walters, or Mr. Luce, that you used
15 their money for personal expenses, as opposed to what you told
16 them you were going to use it for, did you?

17 A. I think I've already testified to that, counselor.

18 Q. You did not, correct, sir?

19 A. Yes, that's correct.

20 Q. And the deal that you signed with Mr. Walters was that you
21 would either have to pay back the loan, prime and interest, or
22 you would get a multiple of the shares of the bank
23 recapitalization, correct?

24 A. That's correct.

25 Q. And throughout the period -- this went on for some time,

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Davis - cross

1 correct, throughout 2012 -- throughout at least until May 2012,
2 correct?

3 A. Actually, it went until September of 2012, when my
4 agreement with the bank expired.

5 Q. And ultimately what happened was somebody else came in and
6 they got the deal; you got outbid, correct?

7 A. I got outbid by another bank, yes.

8 Q. So that the deal that Mr. Walters, Mr. Luce were interested
9 in investing in was actually a good deal; you just got outbid
10 by another player in the market who did what you were going to
11 do but at a different price, correct?

12 A. That's correct.

13 Q. And, sir, again, the people who you had reached out to, you
14 recall that you reached out to various members of the board of
15 Dean Foods, like Jim Turner and June Muse about this
16 investment?

17 A. I don't recall specifically reaching out to them, but I
18 reached out to a lot of people, including a lot of
19 institutional investors in New York and Chicago and in San
20 Francisco and Boston.

21 Q. I want to show you what's been marked as Defense Exhibit
22 586, for identification.

23 And, sir, is this an email from Mike Luce to you,
24 dated 5/21/2013?

25 A. Yes.

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Davis - cross

1 MR. BERKE: Your Honor, I would offer Defense Exhibit
2 586 into evidence.

3 THE COURT: Any objection?

4 MS. CUCINELLA: No objection.

5 THE COURT: Received.

6 (Defendant's Exhibit 586 received in evidence)

7 MR. BERKE: Thank you, your Honor.

8 BY MR. BERKE:

9 Q. And you see, sir, that this says, "Subject: Note
10 renewal/Periscope." And it says, "Tom. I need to get a
11 renewal on your note and check on Periscope and the bank."

12 And, sir, you understood -- you know what Periscope
13 is; we talked about that, correct?

14 A. Yes.

15 Q. And the "bank," that's the bank recapitalization we have
16 been talking about, isn't it?

17 A. Yes, sir.

18 Q. Sir, by -- isn't it a fact, sir, that by September of 2012,
19 you knew that you had been outbid on your end of the deal?

20 A. I'm sorry?

21 Q. Wasn't it your testimony, sir, that by September of 2012,
22 you knew that the deal wasn't going to happen because you got
23 outbid by another market participant?

24 A. Let's see. I want to make sure I've got my timeframes
25 right.

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Davis - cross

1 (Pause)

2 Yes. I think the -- I think the Periscope deal ended
3 in September of 2012. I think that's right.

4 Q. I'm asking about the bank recapitalization deal that we
5 were talking about.

6 A. I'm sorry. Pardon me. I lost my train of thought here.

7 Q. And do you recall, sir, that that deal fell apart for your
8 group and potential investors in September of 2012?

9 A. I think that's right. Yes, I think that's accurate.

10 Q. But you see this email from Mike Luce is dated May 2013 and
11 he's still asking about the bank?

12 A. Yes, I see that.

13 Q. Is that because, Mr. Davis, you didn't tell Mr. Walters or
14 Mr. Luce that the bank deal that they gave you a line of credit
15 for had actually fallen through?

16 A. I don't think that's accurate. I think I told them long
17 before this. I can't answer why Mike Luce asked me this
18 question. But I don't think that's accurate at all because I
19 recall how disappointed I was when we got outbid by another
20 bank and I know I told Billy Walters about it?

21 Q. When did you do that, sir?

22 A. Shortly after the bank deal fell apart and we got outbid.

23 Q. Sir, do you recall the line of credit was in the amount of
24 \$400,000?

25 A. Yes.

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Davis - cross

1 Q. And you recall, sir, we talked about now at some length
2 that throughout this period of time after you got the line of
3 credit, in late 2011 through 2012, you were in great need of
4 cash, correct?

5 A. I think that's a fair summary.

6 Q. That's the time period when you took the money from Shelter
7 Golf, among other things, correct?

8 A. I think that's accurate, yes.

9 Q. But you did not draw down the last 50,000 from the line of
10 credit, did you, sir?

11 A. No, I didn't.

12 Q. And the reason you didn't is because you wanted to create
13 the impression for Mr. Walters that this really was for the
14 bank recapitalization business and you weren't simply drawing
15 it all down to use for some other purpose. So despite your
16 dire need for money during that time period, you left the
17 50,000 to continue to defraud -- withdrawn -- to continue to
18 deceive Mr. Walters and Mr. Luce.

19 MS. CUCINELLA: Objection. Compound question.

20 THE COURT: Sustained as to form.

21 Q. Isn't it a fact, sir, that you left the \$50,000 in the line
22 of credit as part of your efforts to deceive Mr. Walters and
23 Mr. Luce about your use of that money?

24 A. Counselor, until you brought it up today, I never
25 considered that. So, it's a clever theory, though.

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Davis - cross

1 Q. You don't doubt, do you, sir, that you left the 50,000?

2 A. I had no preconceived notion to do that, no.

3 Q. But you did leave it in there, didn't you?

4 A. I didn't draw down all the money, that's absolutely
5 100 percent correct.

6 Q. And you were deceiving Mr. Walters about your use of the
7 money, correct?

8 A. I think I've already testified to that, yes.

9 Q. You also testified about another business transaction,
10 Benefit Harbor, correct?

11 A. Yes.

12 Q. And, again, this was a transaction you brought to
13 Mr. Walters and the Walters Group in October 2013, correct?

14 A. Yes. I think that's a correct timeframe, yes.

15 Q. And again, sir, you thought this was a very good deal,
16 correct?

17 A. And it was, again.

18 Q. And then, again, you viewed this to be a benefit that you,
19 sir, were providing to The Walters Group and Mr. Walters by
20 presenting it to them, correct?

21 A. Yes. I think that's accurate, yes.

22 Q. That's how you viewed Periscope, correct?

23 A. Yes.

24 Q. And that's how you viewed the bank recapitalization deal,
25 if it had gone through, correct?

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Davis - cross

1 A. Yes.

2 Q. And is it also fair, sir, if you recall, that Mr. Walters
3 and his colleagues at the Walters Group did a lot of due
4 diligence on this deal, too, before making a decision about
5 whether to be involved?

6 A. I provided them a meeting -- I set up a meeting and brought
7 the management team of Benefit Harbor out to Las Vegas -- I
8 think it was in October -- in advance of this commitment that
9 the Walters Group made.

10 Q. And that's because The Walters Group, Mr. Walters and
11 Mr. Luce, they were -- and the others folks at the Walters
12 Group were interested in meeting with the management of Benefit
13 Harbor before deciding whether to make an investment?

14 A. Yes, they did.

15 Q. Part of what they did is they provided a line of credit, or
16 an LC, some financing for Benefit Harbor, correct?

17 A. Correct. That's correct.

18 Q. And when that ran out, or when it came to the end of its
19 term, Benefit Harbor wanted to continue that financing through
20 The Walters Group, correct?

21 A. The letter of credit was for one year, and when it expired
22 the following November, the company had not immediately found a
23 replacement for the Walters' line of credit. So, I did talk to
24 Mike Luce about a possible extension.

25 Q. And you recall, sir, that the line of credit, ultimately

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Davis - cross

1 Mr. Walters and the Walters Group decided they had better uses
2 of their money and they declined to continue the line of
3 credit, correct?

4 A. That's correct.

5 Q. And the line of credit was also part of an investment in
6 Benefit Harbor, correct?

7 A. It was actually a letter of credit, counselor, not a line
8 of credit.

9 Q. A letter of credit. And it was part of an investment in
10 Benefit Harbor, correct?

11 A. They received stock as compensation for putting up the
12 letter of credit, yes.

13 Q. And as we have seen from this time period, that you would
14 have discussions with Mr. Walters and Mr. Luce, from late 2011,
15 2012 into 2013, on all these transactions we have been talking
16 about, correct?

17 A. Yes. We had various discussions during that period, yes.

18 Q. And looking at the monies that you ultimately owed from the
19 personal loan to the bank recapitalization line of credit,
20 those weren't the only financial obligations or loans you had
21 trouble paying back on a timely basis, were they, Mr. Davis?

22 A. That's correct. I think that's accurate.

23 Q. In fact, during the same time period you owed money to a
24 variety of people, correct?

25 A. I don't know what a variety of people is defined as.

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Davis - cross

1 Q. Well, do you recall, sir, that you owed 220,000 to CSSF,
2 your investment entity with Mr. Lyons, Bucky Lyons?

3 A. Yes. I recall that, yes.

4 Q. And you recall you borrowed 220,000 in 2008 and then
5 another 50,000 in December of 2008?

6 A. I don't recall that specifically but -- I don't recall the
7 timing of the borrowings from CSSF.

8 Q. Let me show you what's been marked as Defense Exhibit 4921.

9 And let me ask you, sir, do you recall, if you look at
10 this document, does that help refresh your recollection, the
11 loans were in 2008 initially? Look at July and December, if
12 you look at the top.

13 A. Yes.

14 Q. And do you recall, sir, that ultimately you signed a
15 promissory note in 2010 that it was going to try to make this
16 due -- the note that you owed due in September of 2011? Do you
17 recall that?

18 A. I think that's accurate, yes.

19 Q. And you recall that in the beginning of 2011 you owed CSSF
20 419,000?

21 A. Yes, I think that's accurate.

22 Q. And that was a personal loan to you, as well, correct?

23 A. Yes. My partner Bucky Lyon and I both had loans
24 outstanding to the partnership.

25 Q. And do you recall, sir, that you fell behind in the

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Davis - cross

1 payments on that loan throughout that time period?

2 A. I did, yes.

3 Q. And you recall, sir, that you had frequent
4 communications -- well, withdrawn.

5 And you recall, sir, that Mr. Lyons had inquired at
6 various points in time whether any your investments when they
7 were coming due could be used to pay down your note to him? Do
8 you recall that, sir?

9 A. Not to him but to the partnership.

10 Q. To the partnership?

11 A. Yes.

12 Q. And Mr. Lyons was one of the partners, correct?

13 A. He was the partner of mine that we both had loans
14 outstanding, and he was trying to manage the loans that were
15 outstanding and I had an obligation to him, so I gave him an
16 update. He would ask me periodically.

17 Q. But you didn't pay off the note; you told him you couldn't,
18 correct?

19 A. Not immediately, no. I ultimately paid it all off.

20 Q. Do you recall when you did that, sir?

21 A. I think I made my last payment in -- gosh, when was it? --
22 in December of 2014, I think. That's right.

23 Q. And you recall, sir, that throughout 2012 you were
24 e-mailing him about your inability to pay back the loans? Do
25 you recall that, sir?

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Davis - cross

1 A. I'm sure we had email traffic back and forth, yes.

2 Q. And you recall, sir, you convinced Mr. Lyons to extend your
3 note on three separate occasions before you had to pay it off?

4 A. I don't recall that specifically but I know I had some
5 extensions, yes.

6 Q. And there was nothing unusual or untoward or improper about
7 that, correct?

8 A. Not at all.

9 Q. You couldn't pay it and so he agreed to extend the note to
10 give you more time to pay it, correct?

11 A. There was no issue between me and him about that, no.

12 Q. And we talked about that -- just for timeframe, sir, am I
13 right that during the same time period there was a dispute
14 about monies and proceeds that your second wife claimed that
15 you owed her during this same time period we're talking about?

16 A. I don't know when the dispute arose. I'm not sure.

17 Q. Well, do you recall, sir, as part of your divorce, there
18 were certain assets that were illiquid assets that she got
19 50 percent of when those assets were sold?

20 A. Yes.

21 Q. Do you recall, sir, the dispute was when those assets were
22 sold, how to measure what her 50 percent was and how much she
23 was owed?

24 A. Yes.

25 Q. And you recall, sir, that throughout an extensive period of

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Davis - cross

1 time, there was a lot of back and forth between you and her,
2 and you said you could only give her a certain amount but you
3 would give her what you could and try to give her more money?

4 A. Yes, that's accurate. The dispute arose because --

5 THE COURT: I don't know that there is a question
6 pending.

7 THE WITNESS: I'm sorry.

8 Q. And, of course, sir, that you had trouble paying debts that
9 you incurred to casinos, correct? We talked about that.

10 A. I had problems with the Cosmopolitan, yes. That's totally
11 accurate.

12 Q. And that was the \$200,000 debt we talked about, correct?

13 A. Yes.

14 Q. Sir, you understood that Mr. Walters was a well-educated
15 and a very informed investor, correct?

16 A. I thought he was a well informed investor, yes, based on
17 what little I knew about his investing.

18 Q. You knew that he researched the heck out of companies that
19 he was investing in, didn't you, sir?

20 A. I didn't have personal knowledge of that, but from time to
21 time it was clear he got research from other sources.

22 Q. Well, isn't it -- well, you knew he talked to a lot of
23 investment professionals who advised him, correct?

24 A. He never really shared that with me, no.

25 Q. Well, sir, let me ask you this. He would ask you, who's

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Davis - cross

1 the best analyst covering Dean Foods; isn't that correct, sir?

2 A. Yes. He certainly did that.

3 Q. You would give him the names of who you thought was best,
4 right?

5 A. Yes.

6 Q. And at various respective times he would ask you who you
7 thought had, you know, good understanding of Dean Foods,
8 correct?

9 A. I think he did, yes.

10 Q. And you would tell him, right?

11 A. Yes.

12 Q. And you would at times talk about analyst reports that you
13 had both read, correct?

14 A. Yes. I think that's accurate.

15 Q. And you recall, sir, that Mr. Walters closely followed
16 various commodity prices that impacted Dean Foods and the
17 industry; do you recall that, sir?

18 A. I don't know specifically that he followed commodity
19 prices.

20 Q. Well, he would talk to you about it, wouldn't he, sir?

21 A. We talked about a lot of things, counselor.

22 Q. Well, you knew he was very -- well, sir -- am I right, sir,
23 that you would at times talk to Mr. Walters about what was
24 going on with the stock price? When it was moving unusually or
25 there were unusual spikes, he would occasionally ask your

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Davis - cross

1 opinion why do you think it's moving?

2 A. Why do I think it's moving? Yes, I think we had
3 conversations like that, yes.

4 Q. And there is nothing wrong with that, is there?

5 A. Not -- it depends on how I answer it, I guess.

6 Q. Let me show you this, sir. Do you recall, you were asked
7 about Government Exhibit 1907, in evidence?

8 (Pause)

9 And you recall, sir, that, on the bottom, you were
10 asking Gregg Engles in 2008, do you believe the pressure on
11 Dean Foods' stock is because Lehman Brothers is finally blowing
12 out their stock? Do you recall that, sir?

13 A. Yes, I do.

14 Q. And that's when Lehman Brothers was having trouble in the
15 market and they were unloading assets, correct?

16 A. Yes, I think that's accurate.

17 Q. And you recall that this was a time when there was -- the
18 stock price had gone down so you were trying to figure out who
19 may have been the big sellers out there causing this decline;
20 do you recall that?

21 A. That's what prompted this email, yes.

22 Q. And Gregg Engles says, the second sentence, I would have
23 thought they were gone, meaning Lehman Brothers, correct?

24 A. Correct.

25 Q. And, sir, what prompted you to ask Mr. Engles this

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Davis - cross

1 question?

2 A. Because I was surprised that the stock price was declining
3 as it had in this particular period when the company was doing
4 very well and the results looked like we were way ahead of
5 guidance and projections. So, I was frankly surprised.

6 Q. Do you see the date of this is June 11, 2008?

7 A. Yes.

8 Q. Let me show you what's been marked for identification as
9 Defense Exhibit 4227.

10 Sir, this is an email from Bucky Lyons to you dated
11 June 10, 2008?

12 A. No. It is not from Bucky.

13 Q. It is from his father, Buck Lyons?

14 A. That is correct.

15 Q. Just to be clear, Bucky Lyons is the son and Buck Lyons is
16 the father?

17 A. That is correct.

18 MR. BERKE: Your Honor, I would offer Defense Exhibit
19 4227.

20 THE COURT: Any objection?

21 MS. CUCINELLA: No objection.

22 THE COURT: Received.

23 (Defendant's Exhibit 4227 received in evidence)

24 MR. BERKE: If we could put Government Exhibit 1907 up
25 next to it.

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Davis - cross

1 And if we could blow up DX4227 so it could be read.

2 Q. And Buck Lyon asked you: "DT: Think this pressure on Dean
3 Foods' stock is coming from liquidation by investment bank that
4 needs capital?"

5 Right? That is Mr. Lyons asking you about the stock
6 market and what may be causing the decline, correct?

7 A. Yes.

8 Q. And that's perfectly appropriate because that's asking
9 what's going on in the market that outsiders -- that may cause
10 outsiders to either buy or sell the stock, correct?

11 A. Those are an appropriate question, I think, yes.

12 Q. Just so the record is clear, you said that was an
13 appropriate question, correct?

14 A. That Buck Lyons was asking, yes.

15 Q. That is an appropriate question if Bill Walters asked the
16 same question; that is just an appropriate question, correct?

17 A. That is not an inappropriate question, no.

18 Q. And that's -- and if you look at now -- if you put that
19 down lower, if you can do that, Mr. McLeod.

20 And then your question -- your email on the 11th, the
21 next day: "Do you believe the pressure on DF's stock is
22 because Lehman Brothers is finally blowing it out?"

23 Looking at that, do you think you asked Mr. Engles so
24 he could answer Buck Lyons, or do you think the question was
25 prompted by Buck Lyons email?

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Davis - cross

1 A. It could very well have been, counselor. I don't recall
2 specifically but it could very well have been, yes.

3 Q. And you would agree that -- and you understood that Buck
4 Lyons, he was an investor in Dean Foods, correct?

5 A. I had no idea whether he was an investor in Dean Foods, to
6 be honest with you, no. I had no clue.

7 Q. When he is asking questions about Dean Foods' stock, wasn't
8 that a strong hint that he was an investor?

9 A. I'm not going to make that assumption, no.

10 Q. In any event --

11 A. I had no knowledge that he was an investor, none.

12 Q. And this didn't give you any indication that he may have
13 been an investor?

14 A. It didn't, no.

15 Q. And Dean Foods is a prominent Dallas public company,
16 correct?

17 A. Yes.

18 Q. And, again, just to be clear, these types of questions
19 about spikes in the stock, those sorts of things, appropriate,
20 correct?

21 A. The questions are appropriate. It depends on the answer.

22 Q. It depends on how you, sir, answer it, correct?

23 A. Absolutely.

24 Q. Sir, you were an experienced board member with years of
25 training on how to handle material, nonpublic information,

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Davis - cross

1 weren't you, sir?

2 A. Yes.

3 Q. And that's how you carried yourself to the world, correct?

4 A. Yes, I tried to do that. Yes.

5 Q. Sir, you understood that public companies like Dean Foods
6 share information and have meetings all the time with
7 significant investors in the company, correct?

8 A. Yes.

9 Q. And you thought that the senior executives could make the
10 right decisions even if they have material, nonpublic
11 information, be careful so they only disclose proper
12 information, correct?

13 A. Yes.

14 Q. Let me show you what's been marked for identification as
15 Defense Exhibit 4458.

16 And is this an email exchange between you and Gregg
17 Tanner on -- and I would go to the top email. Sir, is that an
18 email from you, rather, to Gregg Tanner that -- again, it is
19 last in a chain of emails, and you are on at least the top one.
20 Do you see that, sir?

21 A. Yes, I do.

22 MR. BERKE: Your Honor, I offer Defense Exhibit 4458.

23 THE COURT: Any objection?

24 MS. CUCINELLA: No objection.

25 THE COURT: Received.

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Davis - cross

1 (Defendant's Exhibit 4458 received in evidence)

2 MR. BERKE: Thank you.

3 BY MR. BERKE:

4 Q. And you see on the bottom, sir, that what was forwarded to
5 you is from someone at Dean Foods, and they're trying to decide
6 whether to combine various positions -- or, I'm sorry, they are
7 working on filling a position, and they're talking about
8 whether they can have somebody who has a finance role be in
9 investor relations; do you see that, sir?

10 A. Yes.

11 Q. And if we go to the next email above that.

12 And Gregg Tanner forwards that to you, correct?

13 A. Yes, he did.

14 Q. And you recall that there was -- the question was can
15 somebody who knows all the finances of the company also play an
16 outward facing investor relations role where they have to deal
17 with investors; that was the issue, correct, sir?

18 A. Yes. I think that's a fair summary of this.

19 Q. And your answer is, to the then CEO of Dean Foods: In
20 spite of the warnings from Dan, I really like the idea of Scott
21 taking on the IR role. He is well spoken and knows the numbers
22 cold. I believe he is capable of only disclosing what is
23 available. I think you guys should given it a try.

24 Sir, you are saying that even though he would have
25 financial information, too, because of the dual role, he can

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Davis - cross

1 just determine what is appropriate to share with investors and
2 what is not, correct?

3 A. Yes. I think that is correct.

4 Q. Am I right, sir, that at times that you were thinking about
5 investing in a company, you might reach out to a friend of
6 yours who is either in the management or the director of the
7 company to talk in an appropriate way about that company?

8 MS. CUCINELLA: Objection.

9 THE COURT: Rephrase it.

10 MR. BERKE: Yes.

11 BY MR. BERKE:

12 Q. Sir, you'll agree with me that there were times that you
13 felt comfortable reaching out to directors of companies that
14 you were thinking about investing in to have appropriate
15 discussions with them about the company?

16 A. I rarely did that.

17 Q. I'm not asking you that. I'm asking you, did you do it?

18 A. I can't recall an occasion that I did that.

19 Q. Well, let me show you what's marked as Defense Exhibit
20 4883. This is an email between you and Mr. Lyons, Buck Lyons,
21 dated August 13, 2010.

22 A. Yes.

23 MR. BERKE: Your Honor, I would offer Defense Exhibit
24 4883.

25 THE COURT: Any objection?

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Davis - cross

1 MS. CUCINELLA: No objection.

2 THE COURT: Received.

3 (Defendant's Exhibit 4883 received in evidence)

4 BY MR. BERKE:

5 Q. OK. Again, this is from Buck Lyon, at the bottom, to you
6 copying Bucky Lyon. And you see where it says -- it says,
7 "ATEC at 2.07." That refers to a company, right? That is a
8 symbol for Alphatec stock, correct?

9 A. Yes, it is.

10 Q. Now, you ultimately later, at a later point, joined the
11 board of Alphatec, correct?

12 A. Yes, I did.

13 Q. But you were not on the board in August of --

14 A. 2010.

15 Q. -- 2010, were you, sir?

16 A. No.

17 Q. OK. And Buck Lyon says to you -- and Buck Lyon is somebody
18 you respect, correct?

19 A. Yes, I do.

20 Q. And he says to you, "Have you talked to Foster about it --
21 could be a screaming buy -- great space."

22 Do you see that, sir?

23 A. Yes.

24 Q. That refers to John Foster, who was a director at Alphatec,
25 doesn't it?

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Davis - cross

1 A. Yes, it does.

2 Q. Again, they are talking about it being a screaming buy.

3 You respond, "I have not talked to him about the
4 company in a while ... you should call him. I would think that
5 it is a buy at that level."

6 Correct?

7 A. Yes.

8 Q. And then he responds: "I have a call in to him."

9 Correct?

10 A. Yes.

11 Q. And you would agree, sir, that it was perfectly appropriate
12 to talk to Buck Lyon about him calling a director of Alphatec
13 to see if it is -- to help make a judgment whether it is a
14 screaming buy, correct?

15 A. I would agree to what? Would you ask the question again?
16 There was a lot of --

17 Q. You would agree --

18 A. You coupled it together. I'm sorry.

19 Q. You would agree, sir, that that was perfectly appropriate
20 to discuss with Buck Lyon him calling a director of Alphatec
21 about his potential investment, correct?

22 A. Well, this email that he forwarded me, he's asking my
23 opinion. And, frankly, he is just asking me if I talked to
24 Foster, and I responded by saying no, you should call him.

25 Q. Right. But you're telling him he should call the director

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Davis - cross

1 to talk about the company and his potential investment?

2 A. Yes. Correct.

3 Q. You didn't think there was anything wrong with that, did
4 you?

5 A. I didn't, no.

6 Q. And, sir, you knew quite well that Dean Foods, both the
7 management and investor relations, would spend a lot of time
8 talking with investors and analysts to get the company message
9 out, correct?

10 A. Yes. I think they did a good job of investor relations.

11 Q. And as a board member, you were sent a lot of emails with
12 analyst reports and descriptions of meetings that took place
13 between management and investors, correct?

14 A. Yes, I was copied on a lot of those.

15 Q. And you generally read the analyst reports, correct?

16 A. I read some of them, yes.

17 Q. And, sir, you said that you discussed analyst reports with
18 Mr. Walters at times, correct?

19 A. Yes. I think I've said that already, yes.

20 Q. And, sir, am I right that you, sir, would speak to
21 investors at times as well, wouldn't you, sir?

22 A. I would -- I don't recall ever speaking to any
23 institutional investors, no.

24 Q. No. But you would speak to other investors, wouldn't you,
25 sir?

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Davis - cross

1 A. I spoke to people, I'm sure, friends of mine who owned
2 stock, yes.

3 Q. And, sir, do you recall that at times when the management
4 of Dean Foods was making a presentation to investors, that
5 sometimes literally the stock price could rise during that
6 presentation depending on what was said?

7 A. Yes, I think that's true.

8 Q. And, sir, am I right that you recall that in 2010, it was a
9 difficult time for Dean Foods, correct?

10 A. Yes. It was a tough year.

11 Q. I'd like to show you what's been marked as Defense Exhibit
12 368.

13 And, sir, do you see that this is an email exchange
14 with you -- between you and another director, Joe Harden, in
15 February of 2010?

16 A. Yes.

17 MR. BERKE: Your Honor, I'd offer Defense Exhibit 368.

18 MS. CUCINELLA: May we just have a moment?

19 THE COURT: Yes.

20 (Pause)

21 MS. CUCINELLA: Do you have a copy of the entire
22 document? I'm sorry.

23 (Pause)

24 Thank you very much.

25 MR. BERKE: I think it is in the binder.

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Davis - cross

1 (Counsel conferred)

2 (Pause)

3 MS. CUCINELLA: No objection.

4 THE COURT: Received.

5 (Defendant's Exhibit 368 received in evidence)

6 BY MR. BERKE:

7 Q. Can we just first go to the bottom to see what is being
8 forwarded.

9 Do you see, sir, this is -- and you recall that
10 Mr. Engles, when he was CEO, there was a period of time when he
11 would do a self-evaluation or self-assessment, correct?

12 A. Yes. He would do it annually.

13 Q. Yes. And although the attachment is not part of the email
14 or the exhibit, you see that he is doing one for 2009, correct?

15 A. Correct.

16 Q. OK. Can we go up to the next email.

17 And, again, the email exchange, that's for Joe Harden,
18 another director, correct?

19 A. Yes.

20 Q. And you are giving your reactions to Gregg's
21 self-evaluation, and you say I think it is an accurate
22 assessment. Do you see that, sir?

23 A. Yes.

24 Q. And you say, if you go to the middle, "I'm not sure how
25 Gregg should have handled it differently, but that feedback

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Davis - cross

1 that I get from certain investors on the buy side is that Dean
2 management team had stumbled somewhat in 2009 with regard to
3 their credibility." Do you see that, sir?

4 A. Yes.

5 Q. And what you're saying to your fellow director is you're
6 describing what you learned based on your communications with
7 buy-side investors, correct?

8 A. Yes, that's correct.

9 Q. And just for the jury, sir, would you describe what
10 buy-side investors mean?

11 A. It is an institutional investor, a money manager, like T.
12 Rowe Price, Templeton, somebody like that.

13 Q. This reflects, sir, in 2010 the communications you're
14 having with institutional investors, correct?

15 A. Yes.

16 Q. Sir, you knew that there were all sorts of topics that you
17 could discuss with investors, whether they were institutional
18 or individual, correct?

19 A. That I could discuss?

20 Q. Legally talk about.

21 A. You mean on behalf of Dean?

22 Q. On any behalf, under the law you can discuss; they weren't
23 illegal to talk about?

24 A. Yes.

25 Q. And do you recall, sir, that at various times you would

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Davis - cross

1 send emails to Dean Foods that you said you would be poring
2 over analyst reports for various quarters, that that's
3 something you would do, pore over analyst reports?

4 A. I certainly followed the two or three analysts that I
5 respected that followed the stock, yes.

6 Q. Let me show you what's been marked for identification as
7 Defense Exhibit 369.

8 And, sir, you see this is an email exchange from you
9 to -- excuse me, first from you to Gregg Engles and then a
10 response from Gregg Engles to you in 2009? Do you see that,
11 sir?

12 A. Yes, I do.

13 MR. BERKE: Your Honor, I would offer Defense Exhibit
14 369.

15 THE COURT: Any objection?

16 MS. CUCINELLA: One moment, your Honor.

17 (Pause)

18 The witness' statement isn't inconsistent with that,
19 so I'm curious for what purpose it is being offered for.

20 MR. BERKE: I'm not offering it as an inconsistent
21 statement. I am offering it to address what he did with
22 analyst reports, which is in the email.

23 MS. CUCINELLA: OK. No objection.

24 THE COURT: Received.

25 (Defendant's Exhibit 369 received in evidence)

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Davis - cross

1 BY MR. BERKE:

2 Q. And, sir, you were sending an email to Gregg Engles about
3 the third-quarter earnings release in 2009, correct?

4 A. Let me take a minute and read this, please.

5 Q. Yes. Please do.

6 (Pause)

7 A. Yes. OK, I finished reading.

8 Q. OK. Sir, you would agree with me, this is you trying to
9 speculate or theorize about how the market reacted to an
10 earnings release, correct?

11 A. Yes. I believe that's accurate.

12 Q. And you said that in order to try to figure out what the
13 market did, you said it's speculation after poring over the
14 last couple of quarters of analyst reports. Do you see that,
15 sir?

16 A. Yes.

17 Q. And then you say, "At the end of the day, your theory about
18 the stock price being correlated milk prices is probably true."

19 Correct? Right?

20 A. Yes.

21 Q. So, again, this is you with Gregg Engles trying to
22 speculate about the impact that the milk prices had on the
23 stock price, correct?

24 A. Yes.

25 Q. And you would --

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Davis - cross

1 THE COURT: All right. That's it, Mr. Berke.

2 MR. BERKE: Yes.

3 THE COURT: Please be seated.

4 Ladies and gentlemen, we've come to the end of our
5 workweek together. That's not the end of your week, because I
6 know if you're like everybody else, you have a lot more going
7 on in your life. There is family. There is laundry. There is
8 cleaning. There is dry cleaning. There are parents, children,
9 people we care for, people we have to look in on, people who
10 look in on us, and I appreciate the sacrifice that you make in
11 serving on this jury. It's one of the privileges and duties of
12 citizenship, and you're fulfilling your needed service in that
13 regard. And I have great admiration for you, and I know you've
14 been paying close attention.

15 I'm going to remind you of a few things as we break
16 until Monday morning.

17 Of course, you know I'm going to say do not discuss
18 the case among yourselves or with anyone else, keep an open
19 mind. But the important thing to remember here is that your
20 jury service is about you. You and you alone, individually and
21 collectively, have sat in this courtroom and have heard the
22 testimony. The views of anyone else have nothing to do with
23 this case, and you cannot allow any discussion to take place
24 about this case.

25 You do not discuss it with family and friends. You'll

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Davis - cross

1 have a chance. You can tell them all about it, everything you
2 remember about it that took place in the courtroom, but not
3 now.

4 And the same way with what I've told you about any
5 social media, emails, blogging, posting, texting, even between
6 and among yourselves, and certainly with any other person about
7 the trial is totally off limits, as are Internet searches or
8 reading news articles. It would be terribly unfair to one side
9 or the other if you took anything like that into account. You
10 wouldn't want that if you were the person who was personally
11 involved in a trial or any of your family members were involved
12 in a trial. You would want the case to be decided on what
13 comes out in the courtroom so everybody is on an even playing
14 field and can react to the same information.

15 So, I remind you of those rules.

16 I hope we get some great weather. I hope you can put
17 this case out of your mind completely. Forget about it until
18 you arrive at a quarter to 10 on Monday morning ready for more
19 action. It's my job to keep us on track and on schedule, and I
20 promise I will do that. I need not get into all of that with
21 you, but that's my job and that's my responsibility, and I take
22 my responsibility to each and every one of you very seriously.
23 I really do. So, I will be working on that.

24 In the meantime, have a very pleasant one and see you
25 on Monday morning.

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Stay safe and healthy.

(Continued on next page)

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Davis - cross

1 (Jury not present)

2 THE COURT: See you on Monday morning.

3 MR. GOLDMAN: Have a good weekend, your Honor.

4 MS. CUCINELLA: Have a good weekend.

5 (Adjourned to 9:45 a.m., Monday, March 27, 2017)

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